Office Supreme Court, U.S.
FILED
FEB 29 1956
JOHN T. FEY (Clerk)

No. 912

VOLUME III.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant.

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR 22 57)

The Court:

Gentlemen, we are going to recess until 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session, 1:30 P. M.

A. R. THOMAS, the witness on the stand at the time of recess, having been previously sworn. resumed the stand and testified further as follows:

Direct Examination

By Mr. Taylor:

Q. Now, Mr. Thomas, I believe we were talking at the noon recess about a meeting at Mr. Parker's house on Sunday afternoon.

A. Yes, sir.

Q. Did you tell anybody at that meeting or instruct anybody at that meeting to forcibly prevent any L&N employees from going to work?

A. I did not.

Q. Did anybody tell you to forcibly prevent any L&N employees from going to work?

A. No.

Q. About what time did the meeting break up?

A. I would say around 5:15 to 5:20, something like that.

Q. Do you remember whether you were one of the first to leave or the last to leave?

A. I went out in the group with the rest of them. I don't know whether I was first, last or middle.

Q. Speak a little bit louder so everybody can hear you.

A. All right.

Q. Now, where did you go when you left the meeting?

A. I took McCutcheon home.

Q. In your automobile?

A. In my automobile.

Q. Then where did you go?

A. I went home.

Q. Did you have any occasion to contact Mr. McCutcheon later that evening?

A. Well, he told me he might lay off because he was figuring on going to work as a laborer in the shop next morning at 7:00 o'clock, and therefore he may not work. So I called him around, I guess 5:45 or 5:50, somewhere around in there, and asked him was he going to work, and he said no, he had called the roundhouse to lay off, and Jordan said why—

Mr. Simpson:

We object to that as hearsay, what Mr. Jordan said.

The Court:

I sustain the objection.

Q. What did you do then, if anything, after you talked to Mr. McCutcheon?

A. I called up and laid off.

Q. Who did you talk to?

A. Mr. Jordan.

Q What did you tell Mr. Jordan?

A. I told him to mark me off sick.

Q. Did Mr. Jordan say anything to you when you told him that?

A. He said there had been a lot of other men laid off.

Q. Speak up a little louder.

A. All right.

Q About what time was it that you called in and rep ted sick?

A. It was around pretty close to 6:00 o'clock.

Q. Did you stay at home the rest of the evening or did you leave?

A. I went to pick up McCutcheon after he asked me to, to go down there and see what was wrong at the roundhouse.

Q. Where did you go?

A. I picked McCutcheon up around 8:00 o'clock.

Q. Around 8:00 o'clock?

A. Yes, sir.

Q. Where did you go with Mr. McCutcheon, if anywhere?

A. We went to the roundhouse, Rex's Barbecue across from the roundhouse.

Q. All right, sir, how long did you stay at Rex's Barbecue?

A. Oh, we got out of the car, and everything was quiet across the street, and Mack said "Will you go with me to get my clothes out of my locker?"

Q. At that time did the situation inside of the Yards appear to you as it always would, or normally would at that time of the day or night?

A. Everything was shutdown, there wasn't an engine running.

Q. What time was this?

A. It was about 8:20 I imagine 8:15, somewhere around there.

Q. I believe you stated that you went into the Yard?

A. Yes; sir.

Q. Who was with you at that time?

A. McCutcheon.

Q What was the occasion of you going into the Yard at that time?

A. He had some, his work clothes, in his locker.

Q. Will you tell the jury, please, what entrance or gate that you entered the Yards with Mr. McCutcheon?

A. I entered what is known as the Rex's Barbecue entrance to the washroom.

Q. Was there anyone with you but Mr. McCutcheon?

A. That's all.

Q. What route did you take in getting to the washroom?

A. I went directly across the bridge, around the right side of the building, and turned back to the left, right into the front of the washroom.

Q. Is that the most direct route to the washroom from where you entered?

Mr. Simpson:

We object to that, leading and suggestive.

The Court:

Sustained.

Q. Did you see anybody while you were walking up to the washroom with McCutcheon?

A. Not a soul.

Q. Sir?

A. Not a soul

Q. Was it dark then around there?

A. It was pretty dark. The lights was still on at that time, but you was still in the shadows throughout the place.

Q. Now, did you talk to anybody except Mr. McCutcheon while you were going in there to the washroom?

A. I didn't go in with McCutcheon.

Q. While you were going to the washroom did you talk to anybody besides McCutcheon?

A. I went to the door of the Engine Dispatcher's Office and stood there talking to Jordan a while, while Mack got his clothes out.

Q. Is that the same Mr. Jordan that you just testified you called over the telephone a short time before?

A. That's right.

Q. How long did you stay there at the window of Mr. Jordan's office?

A. About five minutes, not much longer, if any; less than ten I'm sure.

Q. Do you know, or could you see what Mr. McCutcheon was doing while you were standing there talking to Jordan?

A. I couldn't see what he was doing.

Q. Then did McCutcheon join you after he got his stuff packed up?

A. He came out with an arm load of clothes, and I got down off the steps and went around what you might call the right side of the building going out there with McCutcheon back towards Rex's Barbecue.

Q. What did you and McCutcheon do when you got back together there, if anything?

A. Some switchmen up there in the cab track hollered and asked us what was going on down there, and we said "Nothing, not anybody working down here", and we went on across the street.

Q. You walked on out the footbridge?

A. That's right.

Q. Approximately what time was that, if you recall, what is your judgment of it?

A. Well, it was 8:30, maybe 8:35, something like that.

Q. All right, where did you go then. Mr. Thomas?

A. Went back to the Rex's.

Q. Did you stay in the vicinity of the Rex's Barbecue all that night then?

A. I stayed there until about 9:00 o'clock the next morning.

Q. Did you go about any of the entrances of the L&N Yards that night later on?

A. I did not.

Q. Now were there many or few people around Rex's Barbecue at that time?

A. During the course of the night there was approximately a thousand people or more that came in that vicinity.

Q. You don't mean at one time?

A. During the course of the night.

Q. During the course of the evening?

A. Yes, sir.

Q. Did you see people from all crafts on the railroad down there?

A. All crafts, officials included.

Q. What time did you leave Rex's Barbecue, or the vicinity of Rex's Barbecue that morning?

A. Around 9:00 o'clock somebody approached me and said Otts had been called into a conference in

Birmingham. I don't remember who it was, but it was around 9:00 o'clock. And I assumed, I assumed that he was being—

Mr. Simpson:
We object to what he assumed.

The Court:
Sustained.

Q. Just state what you did Mr. Thomas.
A. I went to town to see—
Q. Now, before we leave that, between the hours of 7:00 a. m. and 9:00 a. m. on Monday morning did you go around the Master Mechanic's gate of the Yard?
A I did not.
Q. Sir?
A. I did not.
Q. Did you go around the powerhouse gate between 7:00 and 9:00 on Monday morning?
A. I did not.
Q. Did you see Mr. Ben Mitchell at either the Master Mechanic's gate or the powerhouse gate or any other gate between 7:00 and 9:00 on Monday morning?
A. I did not.
Q. All right now you testified that at approximately 9:00 a. m. on Monday you left and went to town. Where did you go?
A. I went to the Superintendent's entrance.
Q. Of the Passenger Station?
A. That's right.
Q. Who did you see, if anybody, when you got down there?

A. Mr. Camp was the first man that I saw.

Q. Did you have any conversation with Mr. Camp?

A. I asked him was Otts upstairs

Q. What did he tell you?

A. He said not to his knowledge, there wasn't anyone up there but two men.

Q. Will you speak a little louder?

A. He said to his knowledge there wasn't but two men up there.

Q. Did he tell you who those two men were?

A. Yes. sir.

Q. Who were they?

A. Mr. Kirchner and Mr. Parsons

Q Did he tell you anything else about those two men?

A. Yes, sir.

Q. What did he say?

A. He said they were in a constant conference with Louisville, to see about settling this thing, and didn't want to be disturbed.

Q. Now, you mentioned Mr. Camp?

A. Yes, sir.

Q. Who is Mr. Camp, what is his occupation, if you know?

A. He is Chief Police Inspector for the L&N Railroad.

Q. Where did this conversation with Mr. Camp take place?

A. Directly in front of the Superintendent's door.

Q. Approximately what time was this according to your best judgment?

A. I would say around 9:15.

Q. About how long did you stay at or in the neighborhood of the Superintendent's door?

A. About an hour or an hour and fifteen or twenty minutes, maybe a little longer or less.

Q. Did you see Mr. Claude Johnston down there?

A. He came up at some time during the time that I was there.

Q. Did you have any conversation with him?

A. Yes I talked to him particularly.

Q. What did you talk to him about?

A. I asked him was his men working, and he said they were straggling in from here and there and yonder.

Q. Did you see any other officials of the L&N Railroad while you were there on Monday morning?

A. I saw Ben Mitchell.

Q. About what time did you see him down there?

A. I don't remember when he came up. I believe it could have been around 10:00 o'clock.

Q. Did you have any conversation with Mr. Mitchell around there?

A. I asked him where he was going.

Q. What did he say?

A. He said he was going upstairs to see Mr. Kirchner or Parsons, I don't remember which.

Q. Did you reply to him?

A. I told him that Mr. Camp said that they didn't want to be disturbed.

Q. Was Mr. Camp out there?

A. He was standing right there.

Q. Did Mr. Mitchell say anything else to you then?

A I don't remember whether he did or didn't.

Q. Now, Mr. Thomas. on this occasion that you are testifying about, did you touch or push Mr. Mitchell?

A. I did not.

Q. Did you have any physical contact with him in any way?

A. No.

Q. Did you threaten him?

A. No.

Q. Did you tell him he couldn't go up those stairs?

A. Certainly not.

Q. How long did Mr. Mitchell stay around there?

A. He may have stayed there five minutes or ten minutes; no longer.

Q. All right. Did you see any other people down there or have any conversation with them that you recall, whether you knew their occupation or not?

A. I believe there was two more men came up during the time that I was there.

Q. Did they have any conversation with you or you with them or in your presence or hearing?

A. One of them approached me directly and asked me who to see about some insurance papers. I told him there wasn't anybody upstairs but the Superintendent and Assistant Superintendent, and the Chief of Police standing there says that they didn't want to be disturbed, and Mr. Camp wrote him out somebody's address to go to see, to see about the papers.

Q. Did he leave then?

A. He left then.

Q. Was there any other man that you talked to about anything there that morning?

A. Some other man came up and asked the same question. I believe he asked Mr. Camp, he didn't ask me. And Mr. Camp wrote out something and gave it to him, about the same thing, insurance papers.

Q. Did you physically block that doorway that morning, Mr. Thomas?

A. Not physically. As you phrase it, I might have happened to be standing in it, but if I was in anybody's way, I would get out of their way. I wasn't standing there deliberately to stop anybody from going in.

Mr. Simpson:
We object to any voluntary explanation as to why he wasn't physically blocking it.

The Court:
Sustained.

Q. Did you prevent anybody from going in that door?
A. I did not.
Q. I didn't get your answer.
A. I did not.
Q How were you dressed this morning?
A. Had on these same pants and a blue sport heavy wool shirt.
Q. Now did you have on a jacket too?
A. Not there. I did not.
Q. To the best of your recollection what time was it when you left the vicinity of the Superintendent's office?
A. It was around 10:30, maybe 10:45; no later than that I am sure.
Q. Speak up Mr. Thomas.
A. No later than 10:45.
Q. I can't hear you.
A. No later than 10:45 at the latest.
Q. Where did you go then?
A. I went back towards Inglenook, towards the roundhouse. In going through Inglenook Bruce Bar-

nett hollered at me, and I stopped and picked him up.

Q. Where did you go then with Mr. Barnett in your automobile?

A. Barnett said "Let's go down to the Master Mechanic's gate and see if there's anything going on down there."

Q. Did you go down to the Master Mechanic's gate?

A. We did.

Q. What did you see when you got down there?

A. The gate was locked, not a soul in sight.

Q. Did any other automobile come up while you were there?

A. Mr. Mitchell and Mr. Woelde came up shortly after we did.

Q. All right, did you see any other automobile besides yours and the one Mr. Mitchell and Mr. Woelde were in?

A. Later on I saw one parked across the street, approximately 75 feet away from us.

Q. Do you know who was in the other car?

A. I recognized one of the men sitting on the driver's side.

Q. Who was that?

A. That was Mr. C. S. Hawkins.

Q. Where was your car parked in relation to the Master Mechanic's gate?

A. My car was parked directly in front of the gate.

Q. Did you have any conversation with Mr. Mitchell or Mr. Woelde when they came up?

A. Mr. Mitchell got out of the car. Mr. Woelde was driving. Mr. Mitchell got out and came around there, by the side of the car where I was, and said

he was going in there to see about some meat or livestock or something.

Q. What did you tell him?

A. I told him if he found any livestock in there to let me know, and I would go in there and feed it, or move it where it could be fed and watered.

Q. Did you state to Mr. Mitchell that you would let him go in there and stay 30 minutes, that if he wasn't out in 30 minutes you would come after him?

A. I wouldn't hardly tell an official that.

Mr. Simpson:

We object to that. whether he would or wouldn't.

Q. I realize you wouldn't—

The Court:

Sustained.

Mr. Simpson:

That's not the question.

Q. I realize you wouldn't, but I asked you did you say that or anything in substance that?

A. Certainly not.

Q. Speak out so they can hear you.

A. No, I did not.

Q I believe you testified that the gate was locked.

A. When I moved my car away from it he fumbled around, unlocking it. I don't know whether it had a lock or chain or snap or what on it.

Q. Did you move your automobile?

A. I did.

Q. Did Mr. Mitchell and Mr. Woelde drive in?

A. Mr. Woelde drove in with Mr. Mitchell.

Q. You could see inside of the Yards from where you were parked, could you not?

A. Not very much of it.

Q. Well, from what you could see did you see any work going on in there?

A. I saw all of the shops, the car shop, and one end of the Yard, and there wasn't any activity or anybody in there.

Q. Do you have any judgment as to how long Mr. Mitchell and Mr. Woelde stayed in there?

A. I would guess 20 or 30 minutes.

Q. Did you have any conversation with them when they came out?

A. I don't remember whether I did or didn't.

Q. Do you know Mr. Jody Johnson?

A. Yes, sir.

Q. Do you know both little Jody and big Jody, or young Jody and old Jody?

A. I know them both very well.

Q. Were either one of them in that vicinity that morning?

A. They positively were not.

Q. All right sir. How long did you stay in the vicinity of the Master Mechanic's gate after Mr. Mitchell left?

A. I left shortly after they did, maybe five minutes or less.

Q. Where did you go then?

A. I went back to the Rex's.

Q. How long did you stay around the Rex's that Monday?

A. I stayed there until 4:00 o'clock the next morning.

Q. 4:00 o'clock the next morning?

A. Yes.

Q. Between the time you got back to Rex's after you left the Master Mechanic's gate, at 4:00 o'clock next morning, did you go back to any of the entrances of the L&N Railroad at the Boyles Yard?

A. I never left the vicinity of Rex's until 4:00 a. m. next morning.

Q. Where did you go then?

A. I went home.

Q. I guess you went to bed, didn't you?

A. I certainly did.

Q. All right now what did you do Tuesday?

A. I stayed at home. in bed.

Q. All day?

A. All day.

Q. How about Tuesday night?

A. I stayed at home that night, in bed.

Q. How about Wednesday?

A. I got up around 10:00 or 11:00 o'clock.

Q. Where did you go, if any place?

A. I went back over in the vicinity of the Rex's.

Q. How long did you stay over there on that occasion?

A. I stayed there until about 5:15 that evening, when my wife picked me up.

Q. Where did you go when she picked you up?

A. I went home.

Q. Did you go out anywhere Wednesday night?

A. I did not.

Q. Did you stay at home all evening Wednesday night?

A. That's right.

Q. When did you learn, if you did learn, that the work stoppage had been settled?

A. Next morning, Thursday morning, my wife went up to the corner and got a paper, and it was in the paper.

Q. Was that the first knowledge that you had that the walkout was in fact settled?

A. That's right.

Q. When did you next go back to work for the L&N Railroad?

A. I believe it was Thursday night, I am not sure of that.

Q. Now, Mr. Thomas, there has been some testimony here about a discussion about having some signs painted. Did you have a discussion about having some signs painted?

A. I did.

Q. When did that discussion occur?

A. Saturday morning, at approximately 3:00 o'clock.

Q. What was the occasion for that discussion?

A. Mr. Otts was called south at 5:00 o'clock, and he asked me would I get some picket signs printed.

Q. Did you know at that time whether or not the strike would be called?

A. I did not.

Q. If a strike is called, is it customary that you display picket signs, notifying the public of what the grievance is about, isn't that right?

A. That's right.

Q. Did you make arrangements then to have signs made?

A. I did.

Q. When did you do that?

A. The next morning. I knew—I passed a sign shop going home every morning, and I knew the sign shop was there, so I stopped in an asked the man would he print me up a few picket signs.

Q. All right. Did you receive those signs from the sign shop?

A. I did.

Q. What did you do with them?

A. I throwed them in the back of my car.

Q. Were those signs ever displayed at any time during this work stoppage?

A. I didn't see any displayed, and I didn't display any, and I didn't give anybody, any one tc anyone to display.

Q. Were those signs shown to anybody at the meeting at Mr. Parker's house?

A. No, sir, they were never taken out of my car.

Q. Were those signs ever used by you in any way?

A. Not by me, no. sir, or anyone that I know of.

Q. Now during the period of this work stoppage did you direct any person to physically prevent any other employee from going to work?

A. No, sir.

Q. Did anyone instruct you to prevent any L&N employees from going to work during this work stoppage?

A. They did not.

Q. Who replaced Mr. McCutcheon as your helper, Mr. Thomas?

A. A nigger, Al Smith.

Q. What is his job classification?

A. Laborer.

Mr. Taylor:

I believe that's all. Answer these gentlemen's questions, Mr. Thomas.

Cross Examination.

By Mr. Simpson:

Q. You say over at Parker's house that afternoon there was more there than the firemen?

A. I didn't understand your question.

Q. There were people there who were not firemen?

A. That is correct.

Q. You mentioned some, I believe you say Mr. Southerland was there?

A. Yes, sir.

Q. Isn't he a fireman?

A. He is a fireman, but he don't belong to the Firemen.

Q. He belongs to another Brotherhood, doesn't he? He belongs to one of the Brotherhoods, Railroad Brotherhoods, doesn't he?

A. He belongs to the Brotherhood of Locomotive Engineers.

Q. That is a Railroad Brotherhood, one of the five Railroad Brotherhoods, isn't it?

A. That is debatable.

Q. Debatable?

A. To me, of course.

Q. What do you mean, debatable to you?

Mr. Taylor:

We object to that, arguing with the witness.

The Court:

Sustained.

Q. Isn't that a Union of Railroad Engineers?

Mr. Taylor:
We object to that as argumentative.

Q. And other employees?

Mr. Taylor:
Just a minute, Mr. Thomas. We object to that, may it please the Court.

The Court:
I overrule the objection, as to whether or not the Union he refers to is a member of the Brotherhood.

Mr. Simpson:
Well, I don't think it is important.

Q. You say Mr. Southerland was a fireman, do you?
A. That's right, he was a fireman. but he didn't belong to the Firemen.
Q. He belongs to the Engineers Union?
A. He belongs to the Engineers Union.
Q. But he was a fireman and working over there as a fireman at the time?
A. That is correct.
Q. Now you say that Stuart and Edwards were there also, were they, Stuart and Edwards?
A. I know now who they were.
Q. You didn't know them at the time?
A. I had seen them but I didn't know their names.
Q. Did you tell Southerland, did you tell Mr. Southerland there at that meeting, or during the course of that afternoon, that you wanted him to

tell—you wanted him to tell Mister—do you know Mr. Parrot?

A. Yes, I know him—engineer?

Q. Engineer Parrot.

A. Yes, I know Mr. Parrot.

Q. Do you know Mr. Laney?

A Yes, I know him.

Q. Who is Mr. Parrot?

A. He is an engineer.

Q. Who is Mr. Laney?

A. He is an engineer.

Q. Does he hold any office in the Engineers Organization?

A. He is Local Chairman of the Engineers.

Q. Local Chairman?

A. Yes.

Q. Did you send any word to Mr. Laney by anybody there Saturday morning before that strike started?

A. I did not.

Q. Did you tell Mr. Southerland or anybody else to tell Laney, I mean to tell Parrot not to let Laney keep him on the job this time, when this strike happened, you didn't want him working?

A. I did not.

Q. Did you send any word to Mr. Parrot?

A. I did not.

Q. By anybody?

A. I did not.

Q. Did you send any word to Mr. Laney about not keeping anybody on the job when this strike started there, that word, Saturday morning?

A. I don't even converse with him through anybody else?

Q. You don't converse with who through anybody else?

A. Laney.

Q. Did you converse with him directly?

A. Nor directly.

Q. Nor directly. In other words, you just don't converse with Laney?

A. That's right.

Q. Well now, you had a meeting you say there at Mr. Parker's? That was a meeting, wasn't it? It was called a meeting?

A. If you call a group of men getting together to discuss their problems, it was a meeting.

Q. Well, it was called to discuss what?

A. To discuss what was going to happen to the hostlers that have to go out in the Yard without a helper on the engine, and what to do, if anything, to get the jobs restored.

Q. Well, you were called over there to see what you could do about getting the job restored. weren't you?

A. That among other things.

Q. That was the purpose. There didn't anybody need to tell you what you had to do as a hostler when you were working as a hostler, whether you had a helper throwing your switch around the roundhouse, or whether you had a herder throwing the switch, or who was throwing the switch; there didn't anybody have to tell you that. did they?

A. We met—

Q. You met over there to get these jobs put back, didn't you?

A. Somebody had to tell me whether or not to go out in that Yard without a helper.

Q. Well, you had an engine foreman over there to tell you that, didn't you?

A. My actions as a working man on the Railroad was governed also by the dictates of our constitution and our agreement.

Q. That was Mr. Otts, wasn't it? He is your Local Chairman?

A. I hadn't had a chance, nor 150 more men hadn't had a chance to discuss what to do without a helper.

Q. There weren't any 150 hostlers out there, were there?

A. Every qualified fireman on the main line is a hostler.

Q. How many hostlers were there working out there, how many hostlers jobs were there?

A. Let's see, two on each shift is six jobs.

Q. Six jobs?

A. That's right.

Q. Six hostler jobs?

A. That's right.

Q. How many inside hostlers helpers jobs were there?

A. None.

Q. How many were there then?

A. None.

Q. There were no inside hostler helpers?

A. There is no such thing.

Q. Who did that work inside?

A. There is no such thing as an inside helper.

Q. Who threw the switches?

A. There is no such thing as an inside hostler helper.

Q. I say who did the work that the hostler helper did when you were in the roundhouse?

A. Laborers done it with—

Q. Laborers had done it from the beginning, hadn't they?

A. Laborers done it with the inside hostler.

Q. That's right, the inside hostler. Now then, the outside hostler had what they called an outside hostler helper?

A. That's right. covered by the Firemen's agreement.

Q. There was one job of that kind, that is three shifts with one man each?

A. That's right.

Q. There was one job called an outside hostler helper, wasn't there?

A. That's right.

Q. And that is what this dispute was about?

A. No.

Q. About that one job that ran through three shifts? And that outside hostler helper only assisted the hostler when he brought the engine down outside of the Yard, didn't he?

A. He assisted the hostler inside of the Yard, from as far away as the top of Red Mountain to the Yard limits.

Q. But he only, on all engines that were not going outside of the Yard, they had laborers to do that, assisting the hostler?

A. They still do.

Q. They still do. That had been the rule there throughout the years, hadn't it?

A. With the inside hostler.

Q. With the inside hostler?

A. Yes, sir.

Q. And who throws the switches on these engines when they are brought out of the Yard?

A. The herder.

Q. The herder?

A. Yes, sir.

Q. Now the herder is a switchman that has been promoted to conductor's status, isn't he?

A. That's right.

Q. He is more than an ordinary switchman, he is an experienced switchman that has been given the job of conductor or foreman, isn't he?

A. Not mechanically examined.

Q. Well, whatever sort of examination he had. In other words, he has been promoted above the ordinary switchman's job. And the herder now throws those switches?

A. That's right.

Q. On these engines that come downtown. All right, and the laborer, the man who had been helping on the engines around inside, helping the hostler around the roundhouse, had always been a laborer's classification, and the only change that was made was that the laborer now helps on that engine, even though it is going outside of the Yard, that's right, isn't it?

A. The laborer doesn't go outside.

Q. I say he doesn't go outside, but he helps get the sand in it, to get the fuel in it, just like the laborers had been doing throughout the years out there on the engines that were not going outside of the Yard?

A. No, it's not like it.

Q. I mean outside of the roundhouse, that's correct, isn't it?

A. No, the situation is entirely different.

Q. It is entirely different. All right. Well, I think that I am not going over that any more. Now, you say this meeting that was called over there at Mr. Parker's house, you heard about it through whom?

A. I heard about it Friday night when I picked McCutcheon up at his home.

Q. Friday night. He told you that they were going to have a meeting over there?

A. He told me that they were going to, a group of men was going to be there to decide what to do without hostler helpers on the engine.

Q. You stated here in your affidavit that they were going to decide what to do to get those jobs back, didn't you?

A. Well, that among other things.

Q. Well, you testified to that before. When did you get this—has anybody suggested to you recently, in the last week or so, that you were going to meet over there to see about how you would run your engine without an outside hostler helper, instead of meeting there to get those jobs reestablished? Has anybody suggested it to you?

A. In the last day or two?

Q. In the last day or two or any time, has anybody suggested since you gave this deposition back there in November, 1955, just a month after this thing happened, what that meeting was held for?

A. I thought about it before they even had the meeting, what they were going to do about it, without a helper on the engine.

Q. Didn't you testify then that the purpose of that meeting was to plan to be of assistance in getting the hostler helpers jobs restored?

A. I possibly did, among other things.

Q. Didn't you say you were going to go over and give all your moral support, "Is all that I had"?

A. That's still all I have, yes.

Q. And didn't you say you were ready to do it with, do whatever you could, of course?

A. Certainly. I still am.

Q. But now you tell us though the meeting over there at Mr. Parker's house was to see about how you were going to run your engines with a laborer doing the hostler helpers work?

Mr. Taylor:

We object to that. That's not what he testified to at all.

The Court:

Overruled.

Mr. Simpson:

I have been noticing two or three witnesses here that now say that the meeting was not to try to get the hostler helpers jobs reestablished. The meeting, they say now, was to try to learn how to run an engine without an outside hostler helper.

Mr. Pettus:

We object to the argument.

The Court:

I overrule the objection. Proceed with the interrogation.

Mr. Simpson:

I have finished on that subject.

Q. Now then, Mr. Thomas, you told us that on Sunday night you spent the entire night down at the barbecue stand, Rex's Barbecue place, is that right?

A. I stayed at the Rex's, or in the vicinity of the Rex's.

Q. Now, what do you mean by "in the vicinity"?

A. Well, on the side of the street that Rex's is on, either there or no less than—no further away than 75 feet.

Q. What is that over on the other side?

A. On either side.

Q. You mean you may have gone as much as 75 feet towards the L&N property?

A. I said on the side of the Rex's.

Q. I am just trying to understand you now. The Pinson Pike runs along parallel with the L&N Yards there, doesn't it?

A. That's right, right across the street, the Rex's is.

Q. Rex's is on the right hand side going towards Tarrant, and the Yards on the left?

A. That is the side I stayed on, on the Rex's side.

Q. And there is an entrance there, right off the Pike, isn't there?

A. That's right.

Q. How far would you say that little bridge is from the edge of the Pike?

A. About 25 feet, maybe.

Q. About 25 feet?

A. Yes.

Q. And the other little entrance there, the other one where you drive across it, up there a few feet above, it runs about how far from the Pike does it begin?

A. Maybe 50 or 75 feet.

Q. About 50 or 75 feet?

A. I don't know.

Q. Now you say you didn't get more than 75 feet from what, that night?

A. From the Rex's side of the—I never went 75 feet at the most in either direction of the Rex's side of the street.

Q. In either direction what?

A. I never crossed the street, I had no occasion to. There was nothing over there, it was shutdown.

Q. You mean you spent the night over there around Rex's Barbecue, and you never did go over there around the head of that bridge, 25 feet away from the Pike?

A. I might have walked up that way.

Q. Well, don't you know you were standing over there flexing your muscles over there, and somebody walked up, came over there and said "Reese, what are you doing on this bridge?"

A. I never got on the bridge.

Q. There at the end of the bridge. And don't you know you told him you were there to see that nobody went across that bridge?

A. I did not.

Q. You did not. That did not happen?

A. I did not.

Q. Now, when you left Rex's Barbecue the next morning, that is Monday morning, you say it was about 9:00 o'clock you think?

A. That's right.

Q. And you came down to the foot of the steps there at Mr. Kirchner's office?

A. That's right.

Q. You hadn't been in bed that night, and you had been up part of the night before?

A. I didn't say I hadn't been to bed. I went to sleep in my car parked by the side of the Rex's.

Q. Oh, part of that night you slept out there in your car?

A. Yes.

Q. Was there some reason that you couldn't leave there, some reason you couldn't go home and go to bed? You had a car, and it wouldn't have taken you but four or five minutes to drive home, would it?

A. Yes, it would.

Q. How long would it take you to have driven home from Rex's?

A. About 20 minutes.

Q. Where do you live?

A. East Lake.

Q. In East Lake?

A. Yes.

Q. You could have driven across there in 20 minutes, couldn't you, and gone to bed?

A. My job was at stake, and I didn't know what was going on, and I wanted to be there when I found out what was going on.

Q. Had anything been said about abolishing the hostlers jobs? You were a fireman and hostler, weren't you?

A. The roundhouse was shutdown, and everything else. I didn't shut it down.

Q. You didn't? But you slept out there in your car instead of going home to sleep?

A. Yes.

Q. Now, can you tell us why you slept out there in your car instead of going home to sleep?

Mr. Taylor:

We object to that.

The Court:

Sustained.

Mr. Simpson:
This is cross examination, if Your Honor please.

The Court:
"Why" calls for his motive.

Mr. Simpson:
Judge Black showed me on appeal to the Supreme Court one time that you can cross examine a witness by asking why he did a certain thing. I withdraw the question, however.

The Witness:
I would be glad to answer that question.

Q. Well, if there is no objection over there, I'll let you answer it.

Mr. Taylor:
Go ahead and answer it.

Q. Just tell us why you slept over there.

The Court:
I overrule the objection.

Q. Instead of going home?
A. I was sick and dead tired, and I felt like that I would pass out from lack of sleep and rest if I tried to drive home across two mountains.
Q. Two mountains?
A. Yes.
Q. Mr. Thomas—
A. Two mountains, numerous curves, and crazy people driving on it.

Q. Along, away along in the night?

A. Yes.

Q. What time of night did you go to sleep?

A. It was about 2:00 o'clock in the morning.

Q. About 2:00 o'clock in the morning. There would be a lot of crazy people driving you think on Sunday night?

A. Yes, sir, on that road.

Q. On that road?

A. Yes.

Q. So rather than risk driving home at 2:00 o'clock in the morning to get some sleep, you stayed out there within a few feet of that bridge that led into the L&N Yards, didn't you?

A. I was too tired and sleepy to even attempt to drive home.

Q. When you woke up next morning you were still so tired and sleepy that you came on downtown, is that right?

A. I had got two or three hours. Two or three hours when you need it is worth sometimes ten when you don't need it.

Q. All right. You came down here, and when you got down to Mr. Kirchner's office you saw Mr. Camp, who is a Special Agent for the L&N Railroad, isn't he?

A. That's right, he is Chief of Police.

Q. Chief of Police. He was standing down there on the sidewalk, was he?

A. That's right.

Q. Near the entrance to Mr. Kirchner's stairway?

A. That's right.

Q. You say Mr. Camp told you that there wasn't anybody up there in the office that morning except Mr. Kirchner and Mr. Parsons?

A. That's right.

Q. And that they were in conference with Louisville by telephone and didn't want to be disturbed?

A. That's right.

Q. And he asked you not to go up there, did he?

A. No, he did not.

Q. He didn't ask you not to go up there?

A. No.

Q. So he told you—you said you had heard Mr. Otts was down there, did you?

A. I said that a man told me that he had been called to Birmingham for a conference.

Q. You found out from Mr. Camp that Otts wasn't there, didn't you?

A. That's right.

Q. Did you go on away when you found that Mr. Otts wasn't there?

A. I had no occasion to. I know him, I have been knowing him for years, I didn't mind standing there talking to him.

Q. No, but I say that when you found out,—for a man that had been away from home and out of bed all night long and part of the night before, when you found that Mr. Otts, the man you had come down there to see about, wasn't there, you then didn't go on and go away from there?

A. No.

Q. You stood around and continued—

A. He didn't order me away. He stood there and talked to me.

Q. You stood in the door there, you said you didn't intentionally block it, but you stood in the door. How long did you stay around there?

A. I didn't say I stood there all that time.

Q. How long did you stand around that entrance?

A. I hung on the parking meter and talked to him. And after Claude Johnston came up he hung on the same meter, and leaned up by the side of the car and talked with us.

Q. I didn't ask you about Mr. Johnston. I asked you how long you stayed there at the entrance to that office that morning.

A. Maybe an hour or an hour and 15 minutes.

Q. You stayed a definite time until you were relieved, didn't you?

A. Relieved from what?

Q. Who relieved you from watching that—

A. Relieved from what?

Q. When did Mr. Schilleci and Mr. Saab come up there?

A. I didn't know when they came up.

Q. Well, you left when they came, didn't you?

A. I don't know whether they came up or not.

Q. Mr. Thomas, who told you to come down there and picket that entrance to that building and keep anybody from going in and out of the main office of the Company?

A. Nobody told me anything.

Q. You just did it on your own?

A. I didn't do any picketing.

Q. Oh, you didn't do it on your own? Well now, you were standing down there in that entrance, or near that entrance, you say, leaning on a parking meter part of the time, when Mr. Ben Mitchell came up I believe you told us?

A. That's right.

Q. Mr. Mitchell was an official of the Railroad, wasn't he?

A. That's right, still is.

Q. He was Yardmaster, wasn't he?

A. I don't know. He is Trainmaster.

Q. He was Trainmaster at Boyles, wasn't he?

A. That's right.

Q. And Mr. Mitchell, did he walk up or come up in a car?

A. I don't remember how he came up—he walked up.

Q. He started to go on upstairs, didn't he, in the Company's office?

A. I don't know whether he did or not.

Q. He started to go up the steps, didn't he, he turned in to go up the steps?

A. I spoke to him. I know him.

Q. I didn't ask you if you spoke to him. I say he turned to go up the steps there, didn't he?

A. I don't know whether he did or not. I just told him what Camp said.

Q. Now then, Mr. Camp was standing right there you tell us?

A. Right there by the side of me.

Q. Right there?

A. Yes.

Q. Now, you didn't say anything about—you didn't wait until Mr. Camp could tell him, you didn't wait for Mr. Camp to tell Mr. Mitchell not to go upstairs, did you?

A. I don't know whether I said it first or Camp said it.

Q. Mr. Camp—

A. He verified the conversation.

Q. Wait a minute. Mr. Camp had told you not to go up, not to disturb those people?

A. That's right.

Q. Mr. Camp was standing near Mr. Mitchell, an official of the Railroad, when he walked up, and it was not Camp that told him not to go up?

A. I didn't tell him not to go up.

Q. It was Mr. Thomas that told him not to go up, wasn't it?

A. I didn't tell him—

Q. You told him there were only two men up there, and that they were in conference and didn't want to be disturbed?

A. I said Mr. Camp said they don't want to be disturbed.

Q. What difference did it make to you, Mr. Thomas, if you were not trying to interfere with the operation of the Company's business, whether one official of the Company went up to see another official or not? What business is that of yours? Why were you concerned about it?

A. I wasn't concerned about it.

Q. Why were you telling him then not to go up there and disturb those people?

A. Well, I thought I was doing him a favor.

Q. You were not going to let Mr. Camp do him that favor, you were going to do that favor, were you?

A. I don't know. It didn't strike me as important.

Q. Did it strike you as important—I will ask you whether or not you stood up there, as you said, a while ago, in that doorway part of the time, and shoved Mr. Mitchell back when he started to go up those stairs?

A. He's bigger than me.

Q. I don't know whether he is or not. What do you weigh?

A. I weigh about 225.

Q. 225?

A. Yes.

Q. And you are pretty strong, aren't you?

A. That's debatable too.

Q. Well, you are an able-bodied man, aren't you?

A. I'm 46 years old.

Q. You are 46 years old?

A. Yes.

Q. And you are an able-bodied man, aren't you?

A. I hope so. He is too.

Q. He is?

A. He's bigger than I am.

Q. And you had a reputation too of being a fighter, haven't you?

A. I never heard of it.

Q. You never have heard of that?

A. No.

Q. I will ask you whether or not at the time you went to sleep out there in your car on that Sunday night, slept around there, you say you slept, I will ask you whether or not you had been drinking pretty heavily, Mr. Thomas?

A. I had not.

Q. I will ask you whether or not—you told us here a while ago that along towards the latter part of the strike you were at home practically all the time. I will ask you whether or not the other pickets out there had to finally ask you to leave and go home because you were drinking so that you were disorderly and raising a lot of Cain out there?

A. The girl that runs the cafe, Mrs. Hurst, I told her, or either McCutcheon told her, to come out there and wake me up at 4:00 o'clock, that I was dead tired and wanted to go home, which she did.

Q. Well, did you go home?

A. I did, straight home.

Q. At 4:00 o'clock?

A. That's Tuesday morning I'm talking about.

Q. My question was didn't you get to drinking so heavily out there that other pickets finally asked you to stay off the job?

A. Pickets?

Q. That the pickets, the people that were watching the end of that walk, I call them pickets, you say because they didn't have a sign they were not pickets, but the people that were watching there to keep anybody from going in, didn't they finally ask you to go home?

A. There has never anyone asked me to go home for anything.

Q. You did spend most of the last few days of that strike at home, didn't you?

A. And I was sick in bed, with a very bad cold.

Q. Was it a cold?

A. Absolutely. I keep it all the time practically on the third shift job.

Q. Whatever it was, you stayed most of the time in bed at home and away from the strike during the last two days, didn't you?

A. That's no indication I was at home drunk.

Q. I don't mean to argue with you. I am just asking you about the fact.

A. No, sir.

Q. Now, at the time Mr. Mitchell came down here and started to go up to Mr. Kirchner's office, the Superintendent's office, and you told him that Mr. Kirchner didn't want to be disturbed by another official of the Company, did he stay around there or did he leave?

A. He stayed around and talked five or ten minutes, and left.

Q. Five or ten minutes, then he left?

A. That's right.

Q. You say that after you either told him that, or as he said you shoved him back and stopped him, that he stayed there as much as five or ten minutes?

Mr. Taylor:

We object to that form of question.

A. You testified I shoved him, not me.

Q. You didn't say you shoved him back?

The Court:

Don't argue with the witness, propound your question.

Mr. Simpson:

All right. I don't mean to argue with him, Your Honor.

Q. You say whatever happened there, he stayed there and talked for five or ten minutes?

A. Yes, he stayed there and talked five or ten minutes.

Q. After he started, and didn't go up to Mr. Kirchner's office?

A. He might have changed his mind.

Q. You think you helped him change his mind?

A. I am not ir a habit of helping officials change their mind.

Q. Anyway, he did change his mind?

Mr. Taylor:
We object.

A. I don't know whether he changed it or not.

The Court:
I sustain the objection.

Q. Now then, when did you next see Mr. Mitchell after he left there?

A. Next time I saw him was at the Master Mechanic's gate around noon.

Q. What time of day?

A. Some time around noon.

Q. Around noon?

A. Some time around noon.

Q. Of the same day?

A. That's right.

Q. On Monday?

A. That's right.

Q. Now when you left Morris Avenue and the Superintendent's office on Monday, where did you go?

A. I went around to the Lane Drug Store on First Avenue and got something to eat.

Q. Where did you go then?

A. I went, I started towards Rex's Barbecue, and I ran into Barnett, he hollered at me out there in Inglenook.

Q. You picked up Mr. Bruce Barnett?

A. That's right.

Q. He is one of the Defendants here, isn't he?

A. That's right.

Q. The two of you went where?

A. He said "Let's go down to the Master Mechanic's gate and see if there is anything going on over there in the Yard", which we did.

Q. Now, let's get it in our minds here. As you go out from Birmingham, alongside of the Boyles Yard, the first gate you come to is the powerhouse gate, is that right?

A. That's right.

Q. The next is the roundhouse gate?

A. No, the next—

Q. Next is what?

A. You turn and go to the Master Mechanic's gate.

Q. Next is you turn into the Master Mechanic's gate?

A. That's right.

Q. Then the next is the roundhouse gate?

A. No, next is the Rex's crossing.

Q. Is that where the roundhouse is?

A. That's where we change clothes, at the Rex's crossing.

Q. The roundhouse is just a little further in there, isn't it?

A. I had no business over there.

Q. I'm just trying to get these gates lined up so that we will understand it. The first gate is what that you get to going out from Birmingham?

A. Powerhouse gate.

Q. What is the next gate?

A. The Master Mechanic's gate.

Q. And what is the next gate?

A. Rex's crossing.

Q. Then is there any other gate on beyond that?

A. Roundhouse entrance.

Q. Roundhouse entrance?

A. Yes.

Q. You left downtown and went back out to Rex's place, or that is—has that got any other name besides Rex's entrance?

A. It is getting monotonous, ain't it?
Q. I say has it got any other name?
A. No, sir.
Q. What part of the Yards does that go into?
A. The Rex's?
Q. Rex's entrance as you call it, yes.
A. It goes to the washroom and Engine Dispatcher's Office where we have to transact all of our business.
Q. All right. And beyond that is the roundhouse, is that right?
A. That's right.
Q. Some people call it the roundhouse gate, don't they?
A. That's right.
Q. You said Rex's gate?
A. That's right.
Q. You call it the Rex's gate. You have a right to call it what you want to.
A. I call it Rex's entrance.
Q. Rex's entrance?
A. Rex's entrance.
Q. You go in there and go to the washroom?
A. That's right.
Q. Then you go further to the roundhouse, don't you?
A. That's right.
Q. Now, you went out to that place?
A. Yes.
Q. In going from Birmingham to the Master Mechanic's gate you pass that entrance, don't you?
A. Which entrance?
Q. The one where you said you went, the one you call Rex's gate?
A. From Birmingham to the Master Mechanic's gate I would pass the powerhouse.

Q. The powerhouse gate?

A. Yes.

Q. All right.

A. And the next entrance, you would turn to the left and go approximately a block and be at the Master Mechanic's gate.

Q. Now, you say the next place you saw Mr. Mitchell after you left him, or after you left down here at Mr. Kirchner's office was out there at what place?

A. At the Master Mechanic's gate.

Q. Did you see him before you got to the Master Mechanic's gate?

A. No, sir.

Q. How long did you get to the Master Mechanic's gate before he got there?

A. It might have been five minutes, two or three; five or less.

Q. Two or three minutes, or maybe five minutes?

A. That's right.

Q. And when your car was stopped there it was stopped right blocking the gate, wasn't it?

A. The gate was closed.

Q. It was closed, but it was right blocking that gate, wasn't it?

A. It was a street. I didn't see any harm in stopping it there where I could see everything.

Q. Well, I realize you didn't see any harm in it, but I am asking you the question, you stopped your car so that if the gate had been opened it would have blocked traffic in and out, wouldn't it?

A. Well, I guess it would.

Q. You guess it would. Well, you know it would, don't you?

A. I don't see any reason for blocking it when it was already locked.

Q. I am asking you that, please, sir.

A. I just happened to stop there.

Q. Just happened to stop right there so nobody could drive up, unlock the gate and go in?

A. There is hedges or flowering shrubs on one side of it, and there's a big high arch entrance for people to walk through on the other side.

Q. You say Mr. Hawkins was sitting over there in the car, wasn't he?

A. I said he was. There was a car drove up shortly after we parked across the street, and about 50 or 75 feet behind us.

Q. Was that the one that Mr. Mitchell was in or the one that Mr. Hawkins was in?

A. That was after Mr. Mitchell had already driven up.

Q. Mr. Hawkins came on up?

A. Yes, sir.

Q. Mr. Letchman was there, wasn't he?

A. I don't know whether he was or not. Somebody was in the car with him but I couldn't tell who it was from the side I was on.

Q. Didn't you see Mr. Letchman get out there and join in the conversation about whether Mr. Mitchell was going in the Yard or not?

A. I didn't hear it.

Q. You didn't see it?

A. I moved my car out of the way.

Q. You left your car there, standing at the gate, and in about two or three minutes or maybe five minutes Mr. Ben Mitchell and Mr. Woelde drove up, didn't they?

A. That's right.

Q. In a car. Now you had seen those men coming there, and you had speeded up and come down and

passed them in your car as they were driving down there that distance from the highway down to that gate, hadn't you?

A. I don't remember passing anybody.

Q. Will you tell this jury—

A. I certainly wouldn't have on that dirt road.

Q. Wait a minute. That dirt road is a road wide enough for two and a half or three automobiles to go down abreast, is that right?

A. It is worse than a country lane with ruts.

Q. You say that it hasn't been a cherted road?

A. It is a rutty road, very rutty.

Q. I didn't ask you about the road down there, I am asking you if you didn't pass Mr. Mitchell on that road?

A. I wouldn't run over 5 or 10 miles an hour on that road.

Q. Now, Mr. Thomas, I didn't ask you if you would run over 5 miles an hour. Are you trying to avoid something? Why don't you answer my questions?

A. I didn't pass anybody. I have already said that I didn't pass anybody.

Q. My question is did you see Mr. Mitchell and Mr. Woelde driving down that road when they turned off the Pike, and did you then come on down there in your car and pass them and go up and park your car in front of that gate?

A. I didn't pass anybody.

Q. You say you didn't pass them and park your car in front of the gate then?

A. I didn't pass anybody.

Q. All right. When Mr. Mitchell and Mr. Woelde drove up there with your car in front of the gate, whether you passed them or not, they got out and said that they had come out there to see about some livestock and perishables?

A. I was already out of the car.

Q. You were out of your car?

A. Bruce Barnett was already out of the car. We were looking over into the Yard to see if we could see anybody working over there.

Q. What did you want to see if anybody was working over there for?

A. Well, I was curious.

Q. Just curious?

A. Yes.

Q. Was Mr. Hawkins and the man that was with him curious too?

A. They didn't come over there where I was. They didn't get out until after Ben came up.

Q. They were about 75 feet away most of the time, weren't they?

A. They came up some time after Ben come up.

Q. You were just curious, and you were looking around there. And when Mr. Mitchell got up there and Mr. Woelde, did Mr. Mitchell say something to you?

A. He got out of the car and come around and said he wanted to go in and see about some meat or perishables or something like that. I didn't pay much attention to him. My car was in the way. I said "Well, if you find anything, let me know, any livestock, let me know, and I will move it, I'll see that it is fed and watered."

Q. You were very careful to say you would do all that. Now, my question was, Mr. Mitchell spoke to you, did he?

A. That's right.

Q. Do you say that Mr. Mitchell did or did not ask you if it would be all right for him to go on in there and see about this thing, and get the bills of lading

out of the Yard Office, and see if there was any perishables or livestock in the Yard?

A. He's not in the habit of asking me things like that.

Q. Now, Mr. Thomas, I didn't ask you that. I am asking you if on this occasion he asked you if it would be all right for them to go in, for him and Mr. Woelde to go in there and look for those bills of lading?

A. No, he didn't ask me anything about going in there. He said he was going in there to see about it.

Q. Isn't it a fact you first told him that he couldn't go in?

A. I didn't tell him he couldn't go in any time.

Q. And isn't it a fact that Mr. Letchman then got out of the other car sitting over there and came over and said "Well, if there is any livestock in there you ought to let him go in and see about it", isn't that true?

A. If Mr. Letchman even got out of the car, he done it while I was moving my car out of the way.

Q. Isn't it a fact that after Mr. Letchman came over there and argued with you a while that you agreed that he could go in, he and Mr. Woelde, provided they didn't stay over 30 minutes?

A. I didn't even know Letchman was in the car.

Q. All right.

A. He done what he done, if he done it, in my absence in moving my car away from the entrance.

Q. And isn't it a fact that after Mr. Letchman came over there, that you then did get in your car and move it out of the way, away from the entrance, and these men went on in?

A. I don't know when Letchman—

Q. That is true, isn't it?

A. I didn't know that Letchman came over there. If he came over there he came over there while I was moving my car.

Q. Would you say you put a limit or didn't put a limit on the time Mr. Woelde and Mr. Mitchell could stay there?

A. I did not.

Q. You told us a while ago they actually stayed in there about 20 or 30 minutes, didn't you?

A. Something like that. I didn't time them.

Q. And when they came out, you told us a while ago you stayed there four or five minutes, and then you left?

A. That's right.

Q. So you were there just ahead of them, you stayed there during the 30 minute period, and then you left just after they left, didn't you?

A. I told him to let me know if there was any livestock in there.

Q. I didn't ask you about all of this.

A. Well, I did.

Q. I didn't ask you about all of this, if you were going to move the livestock. I am asking you if it is not a fact that you told those two men they could stay in there 30 minutes, and if they didn't come out in 30 minutes you were coming in and get them, and if you didn't wait there on the two men, wait and notice to see if they came out, and you left there just after they left?

A. I did not.

Q. All right. Now, Mr. Otts, that is J. B. Otts, Jr one of the Defendants, asked you, did he, to see about getting the signs painted?

A. That's right.

Q. That was on Saturday morning about what time?

A. Around 3:00 a. m.
Q. What?
A. Around 3:00 a. m.
Q Around 3:00 a. m.?
A. Some time around that time in the morning.
Q. You were getting off from work?
A. No, he was going out to work.
Q. He was going out to work?
A. Yes.
Q. Were you going out or coming off?
A. I was on the job.
Q. You were on the job?
A. Yes, sir.
Q. About 3:00 a. m.?
A. Yes, sir.
Q. You got off about 7:00 a. m.?
A. That's right.
Q. He was going out on a run, out of town?
A. To Montgomery.
Q. Where were you when he asked you to get those signs painted?
A. In the washroom.
Q. And did he tell you what to put on them?
A. I asked him what he wanted to put on them, and he wrote it out on a little piece of paper and handed it to me.
Q. What was it that he wrote out on this paper?
A. "L&N Railroad Unfair to Outside Hostler Helpers", I believe it was.
Q. Did he sign it by any Union?
A. No.
Q. He didn't have any Union name on it?
A No.
Q. Usually when you have picket signs, you have the name of the Union that is picketing, don't you?

A. That could have been added if we had got authorization for it.

Q. So at that time you didn't think you were going to get authorization for the strike, did you?

A. We didn't know, we couldn't presume.

Q. Well, you didn't know whether you were going to get authorization or not, did you?

A. I wanted to be prepared in case we did.

Q. You were preparing for a strike, and if you had the authorization, why you could just put the Union name on there, couldn't you?

A. That's right.

Q. If you didn't get authorization, why you would just have pickets that were ready, or signs ready without the Union name on them, wouldn't you? You wanted to be ready in either case, didn't you?

A. What do you mean "In either case"?

Q. Well, you wanted to be ready to strike whether it was authorized or was not authorized?

A. We wanted to be prepared to have the signs if it was authorized. And it wasn't, and they wasn't used.

Q. And so when Jake Paschal told you all that this would be a wildcat strike, an outlaw strike, and the Union couldn't support you in it, you went ahead and struck anyhow, you didn't use those signs because Paschal had told you that it was an outlaw strike, didn't you?

Mr. Taylor:

I object to that question because he has four questions lumped into one. I don't object to him asking them singly.

The Court:
Overruled.

Q. Isn't that right, Mr. Thomas?
A. You ask four questions again, and I might remember all of them.

Mr. Simpson:
All right.

The Court:
Rephrase your question.

Q. Didn't Mr. Paschal send word down here that that would be an outlaw strike?
A. That's what I found out Sunday afternoon.
Q. Sunday afternoon?
A. Yes.
Q. And you found it out from whom, who told you that?
A. Mr. Otts.
Q. Mr. Otts told you that?
A. Yes.
Q. Mr. Kennedy told you that too, didn't he?
A. Mr. Kennedy didn't tell me anything.
Q. Mr. Kennedy made the statement over there at that meeting?
A. He made one something to that order that I heard, but he wasn't talking to me.
Q. He told that meeting over there that he had called Mr. Paschal that very afternoon, and Mr. Paschal told him not to let the men strike, it would be an outlaw strike, didn't he?
A. He further substantiated what Otts said.
Q. What you already knew?

A. No, I didn't know it until I got to the meeting.

Q. Well, I beg your pardon, sir, I didn't mean you knew it then. What you thought or what somebody told you?

A. I don't let other people's thoughts judge my action.

Q. You just do what you want to, don't you?

Mr. Pettus:
We object to that.

Q. Is that what you mean?

The Court:
Overruled.

Q. What do you mean, you don't let other people's thoughts judge your action?

A. I don't know what Mr. Kennedy thought.

Q. Did you think I asked you that, Mr. Thomas?

A. I was only doing what I thought was right; if we had a strike, to be prepared for it, and have the signs ready in case the General Chairman did authorize the strike.

Q. If you were getting them ready only for an official strike, you would have the Union's name on them, wouldn't you?

A. That could have been added later, which we done many times during the 58 day strike.

Q. If you were not going to have a strike unless it was going to be an official strike you would have gone ahead and put the Union's name on them, wouldn't you?

A. It wasn't always on them during the 58 day strike either.

Q. The 58 day strike was a legal strike, wasn't it?
A. Yes, sir.

Mr. Taylor:
We object to that, calling for a conclusion of this witness, incompetent, irrelevant, and immaterial.

The Court:
Sustained.

Mr. Simpson:
He's the one that brought it up.

Mr. Taylor:
No, you brought it in.

Mr. Simpson:
Did I? Well, all right.

Q. Mr. Thomas you got out there Sunday night, and you say you walked over into the Yard when you came back from this meeting, you walked over into the Yard, didn't you?
A. I walked over into the washroom.
Q. Into the washroom?
A. Yes.
Q. With Mr. McClendon?
A. No, Mr. McCutcheon.
Q. I mean Mr. McCutcheon.
A. Yes, sir.
Q. Did anybody else go with you?
A. No, sir.
Q. Did you see Irvin Rich that evening?
A. I did not.
Q. Do you know Mr. Rich's wife and baby?

A. No.

Q. Do you know his car when you see it?

A. No.

Q. Did you see it parked there beside the bridge, near the bridge that led into the washroom?

A. I wouldn't know it if I saw it parked here.

Q. Did you see Mr. Parker there?

A. I saw Mr. Parker over in the Rex's.

Q. You saw him over in the Rex's?

A. Yes.

Q. Did you see Mr. Parker talking to Mr. Rich's wife and baby?

A. I don't know Mr. Rich's wife or baby either.

Q. All right. Did you see him talking to a lady and a child in a car sitting there by the bridge?

A. He was there inside of Rex's Cafe when I saw him.

Q. Did you see him talking to a lady and child in a car?

A. I did not.

Q. Did you see Mr. Rich over there after you got in the roundhouse, got over in the Yard?

A. I didn't see anybody in the Yard but L. P. Jordan, and he was in the office.

Q. I will ask you whether or not you and Mr. Parker and Mr. McCutcheon walked away from the washhouse and went down through the roundhouse and went out into the Yard, and hollered through that Yard that night "Labor trouble; clean out the Yard", or "Get out of the Yard"?

A. I did not.

Q. And if you went near or passed Mr. Irvin Rich as he was standing there, and went on to the roundhouse and did that?

A. If I had passed him I would have seen him. I did not see him.

Q. Maybe you didn't see him, but did you go near or did you see some man as you three went into that roundhouse that night?

A. I didn't see anybody.

Q. Whether you saw them or not, do you remember who it was that went in the roundhouse with you?

A. Nobody went into the roundhouse with me because I didn't go in.

Q. Do you tell this jury that you are not one of the men that was going through that Yard that night calling out, hollering "Labor trouble; get out of the Yard", or "Get out of here"?

A. I'm not that big and that mean.

Q. I didn't ask you that, did I? I am asking you if it is not a fact that you and one gang, and Mr. Hall and some other people in another gang went through that Yard that night hollering "Labor trouble; get out of the Yard"?

A. I didn't do it, and I can't speak for anybody else.

Q. If you were not in the gang that hollered to R. E. Thomas and Mr. Simrell and those people up there "Get out of this Yard; if you don't get out we're coming back to get you"?

A. I didn't even go into the Yard. I only went to the washroom.

Q. You just deny that you went in the Yard. You did go across the little bridge, through the fence and into the washroom that night, didn't you?

A. I didn't go into the washroom, I went to the door of the entrance to the Train Dispatcher's Office.

Q. You claim that you spent that time standing there talking to Mr. Jordan?

A. About five minutes.

Q. All the time you stayed in there you claim you were standing there talking to Mr. Jordan?

A. That's right.

Q. And you didn't even see Mr. Rich?

A. I did not.

Q. And you didn't go through the roundhouse and out into the Yard and run the people out of the Yard?

A. I did not.

Q. Over there in the meeting at Mr. Parker's, I will just ask you one more question about that. You know Mr. Fleming, don't you, that testified here, the first witness in this case, a rather small man?

A. I thought I knew him.

Q. What do you mean? Do you know him or not?

A. I know him, yes.

Q. You know him?

A. Yes.

Q. How long have you known him?

A. Not very well.

Q. Well, how long?

A. I just know he has been working out there off and on, cut off mostly. I know him, yes, I know him.

Q. How long have you been working with him and knowing him, over how long a period of years?

A. I have been working there 14 years.

Q. 14 years?

A. Yes.

Q. Has he been there all that time or most of it?

A. He has been cut off most of those 14 years.

Q. He has been cut off?

A. Yes, sir.

Q. What sort of job has he got?

A. I don't know what he has got now.

Q. What sort of job does he do? What is he, a fireman or brakeman?

A. He is a laborer, I understand, from what he said up here the other day.

Q. He has a laborer's classification, is that right?

A. I don't know what kind of classification he has got.

Q. Now, did you see Mr. Fleming over at Mr. Parker's that day?

A. Yes, I carried him over there.

Q. You carried him over there in your car?

A. Yes.

Q. You knew him pretty well, didn't you?

A. I knew him well enough to pick him up and give him a ride, yes.

Q. I will ask you whether or not in Mr. Fleming's presence there at Mr. Parker's in that meeting you are not the man that got up while J. B. Otts was on his feet and said "Its time to pull the pin. Let's close this thing up"?

A. I don't believe I have even heard that terminology used before.

Q. You have not? You have never heard the expression "Pull the pin"?

A. That is a brakeman's terminology.

Q. What is that?

A. That is a brakeman's terminology and switchman's terminology. I never heard a fireman or engineer or hostler use that terminology.

Q. That is Railroad terminology that is used around the Yard, to "Pull the pin", isn't it?

A. I didn't say it, no.

Q. You had heard it many times though, hadn't you?

A. I heard him say it up here.

Q. You heard him say it there on the stand, that you got up and said that, didn't you?

A. Yes, I heard him.

Q. Now, did you say that in Mr. Fleming's presence over there?

A. I positively did not.

Q. "Its time to pull the pin and close this thing up"?

A. I did not.

Q. Well, anyway, as soon as you left that meeting you went over and checked out as sick, didn't you?

A. No, I called up from home.

Q. I didn't mean that, I meant you went to a telephone and called up and checked out as sick, didn't you?

A. Yes, I did.

Q. Well, I am not in position to argue with you on that, but you did check out as sick as soon as you left that Parker meeting, didn't you?

A. I was, I did.

Q. You did, as soon as you left the Parker meeting?

A. About 30 or 40 minutes after I left there.

Q. Well, you checked out before 9:00 o'clock?

A. I checked out when I found out McCutcheon wasn't going to work the job, and I didn't want to work it with a nigger.

Q. You checked out before 9:00 o'clock, didn't you?

A. Oh, yes.

Q. All right. Did you know who they were going to assign to do McCutcheon's job over there?

A. I knew when they abolished the job that there would be a nigger on it, and I knew if he laid off there would be a nigger on it.

Q. You knew Mr. Fleming has a laborer's classification, hasn't he?

A. I don't know what he has got.

Q. You heard him say he had, I believe?

A. I know it now.

Q. How did you know that Mr. Fleming wasn't going to be assigned to be your helper?

A. I didn't know that he wasn't.

Q. What are you trying to bring in this "nigger" business in this lawsuit about? Did anybody tell you that they were going to assign a Negro out there to do your job there?

A. I would rather work with a nigger than to work with him, he's so slow and lazy.

Q. You would just rather work with a Negro than work with Fleming. All right.

The Court:

Let's confine the evidence to the answers to the question. Go ahead.

Mr. Simpson:

Thank you, Judge.

Q. Your answer is that nobody had told you that if McCutcheon didn't work that they were going to assign a Negro to be your helper, did they? That was your answer? Nobody told you that?

A. They usually do put a nigger on it.

Q. I thought you said they had never done anything like this before.

A. When the hostler helper laid off, nine times out of ten we would always get a nigger on the job.

Q. You had an extra hostler helper, Mr. Dougherty, didn't you?

A. He worked out in the Car Department.

Q. I can't argue with you. The question I am asking you, and I want you to answer it, so we will

nave to quit it, but nobody had told you that the laborer that would be assigned to your hostler helper would be a Negro, had they?

A. Nobody had told me it wouldn't, either.

Mr. Simpson:

All right, that's all. Come down.

Mr. Taylor:

Just one or two other questions, Mr. Thomas.

The Court:

Go ahead and ask your question. I want to finish before recess, if you can get through with him.

Mr. Taylor:

It is going to be very short. I just wanted to ask him this.

Re-Direct Examination.

By Mr. Taylor:

Q. You are a member of the Firemen's Organization, is that correct?

A. That's right.

Q. On October 23, 1955 you were a member of that organization, were you not?

A. That's right.

Q. What was your average rate of pay at that time?

Mr. Simpson:

I am going to object to that. What is the materiality of that?

Mr. Taylor:
October 23, 1955.

The Court:
I sustain the objection.

Mr. Pettus:
That is relevant on the issue of damages. He wasn't paid during this time, and none of the other 2,500 employees were paid.

The Court:
There is no counterclaim.

Mr. Pettus:
We don't have any counterclaim, but that goes to the losses that they claim.

The Court:
Well, they are not claiming, as I understand, for money that they didn't pay laborers.

Mr. Pettus:
Well, that is a savings that we are entitled I assume to argue.

The Court:
I sustain the objection

Mr. Pettus:
We except

Mr Taylor:
All right, I have one other question. May I ask him one other, Judge?

The Court:
Yes, one.

Q. Do you know whether Mr. Mitchell, Mr. Woelde, Mr. Kirchner, and Mr. Parsons, and Mr. Quiggins and Mr. Mills have been transferred from Birmingham since this work stoppage was concluded?

Mr Simpson:
We object to that.

The Court:
I sustain the objection.

Mr. Taylor:
All right, come down.

The Court:
Come down.

(Witness excused.)

The Court:
Gentlemen, we are going to take a recess for 20 minutes at this time.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Pettus:
J. O. Bentley.

J. O. BENTLEY, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?
A. J. O. Bentley.
Q. J. O Bentley?
A. Yes, sir.
Q. Where do you live?
A. 1317 Prosch Avenue.
Q. What work do you do?
A. Switchman for the L&N Railroad.
Q. Switchman?
A. Yes, sir.
Q. What labor organization are you a member of?
A. Brotherhood of Railroad Trainmen.
Q. What is your average pay per day?

Mr. Gibson:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

I sustain the objection.

Mr. Pettus:

We except.

Q. Do you remember this work stoppage?
A. Yes, sir.
Q. Were you paid during the work stoppage in October, '55 for the days that the work stoppage was in force?

A. No, sir.

Q. Do you recall that that work stoppage began on Sunday, October 23?

A. Yes, sir.

Q. Do you recall the occasion?

A. Yes, sir.

Q. Where were you on that day?

A. I was in Cullman.

Q. Did you come back to Birmingham that day?

A. Late in the afternoon.

Q. Late in the afternoon?

A. Yes, sir.

Q. Did you transact any Railroad business that day?

A. No, sir, other than I got rolled, I got misplaced some time Sunday night, between 8:00 and 9:00 o'clock.

Q. Then did you have any conversation with a caller or dispatcher then?

A. The chief caller called me.

Q. The chief caller called you?

A. And notified me that I had been misplaced.

Q. Did he assign you a new job?

A. Yes, sir, I placed myself on another job.

Q. On another job?

A. Yes, sir.

Q. Who was the chief caller that called you?

A. Junior Wren I believe.

Q. Now is there a different caller that calls switchmen from the caller that calls the firemen and engineers?

A. Yes, sir.

Q. That is, a different caller?

A. Different caller.

Q. Did you go on or about the Company property or in the vicinity of the Rex's Barbecue on Sunday?

A. No, sir.

Q. Did you get any notice or advice that there was a work stoppage on Sunday, did you learn about it on Sunday?

A. No, sir.

Q. You did not?

A. No, sir.

Q. When was the first time you learned that there was a work stoppage?

A. When I reported for work Monday morning.

Q. You reported Monday morning?

A. Yes, sir.

Q. Where did you report?

A. At the Master Mechanic's gate.

Q. At the Master Mechanic's gate?

A. Yes, sir.

Q. Do you know W. F. "Red" Pennington, one of the Defendants?

A. Yes, sir.

Q. Did you see him that morning?

A. I don't recall if I did.

Q. Monday morning, that is?

A. I don't recall it if I did.

Q. You don't recall about seeing him?

A. No, sir.

Q. Did you make a trip with Red Pennington?

A. Yes, sir.

Q. Where did you go to?

A. We went to Decatur.

Q. Do you know a man by the name of Jack Coley?

A. Yes, sir.

Q. Did you see him on that trip?

A. No, sir.

Q. Did you go to his house or where he was supposed to have a house?

A. Yes, sir.

Q. Was he there, Coley?

A. No, sir, he had moved from the present address that he was at, or the last time I knew where he lived, he had moved.

Q. Who was with you and Red on that occasion, if you recall?

A. Bruce Barnett.

Q. Bruce Barnett?

A. Yes, sir.

Q. Whose car were you in?

A. In Red's.

Q. After you failed to find Coley did you go anywhere near the Railroad property there?

A. Yes, sir.

Q. Where did you go?

A. To the Yard Office.

Q. About what time of the day was it?

A. Well, I would say it was around 4:00 or maybe 4:30.

Q. Did all three of you get out of the car?

A. Yes, sir.

Q. Did you go into the Yard Office?

A. Yes, sir.

Q. Do you know the people there, do you know who you saw there?

A. Yes, sir.

Q. Could you call some of them off?

A. Well, I saw the Yardmaster, Mr. Hardwick, and two or three clerks, and Mehaffey. I say two or three, I remember him, and Glasscock was a clerk, and Harry Dublin, a switchman. Mr. Toone, Special Agent.

Q. Mr. Toone, Special Agent, was there, was he?

A. Yes, sir.

Q. Was there a conversation there that took place in the office?

A. Yes, sir.

Q. In the Yard Office?

A. Well, a general conversation.

Q. Do you recall what it was?

A. Well, it was about the work stoppage.

Q. Just say what was said then.

Q. As well as you can remember?

A. I don't recall at all.

A. Well, I don't recall all that was said. There was some one wanted to know how things was going down at Boyles, and some one, it might have been myself, made the remarks that everything was at a standstill, wasn't any work going on.

Q. Did any of you have a newspaper?

A. There was a newspaper in the car.

Q. Do you know whether a newspaper was taken out of the car or not?

A. Yes, sir, I believe it was.

Q. Was there anything else said at the Yard Office by anybody about the work stoppage?

A. Well, most everybody was talking about it.

Q. How long did you all stay there?

A. I don't remember, about 15 or 20 minutes.

Q. 15 or 20 minutes?

A. Probably 30.

Q. Did you have any conversation there with Mr. Toone that you recall particularly?

A. Well, I spoke to him and shook hands with him, asked him how he was getting along.

Q. He is a Special Agent, is he?

A. Yes, sir.

Q. Did you all leave the Yard Office then?
A. Yes, sir.
Q. Where did you go then?
A. We went on up in what they call Old Decatur, up to the Freight House.
Q. Up to the Freight House?
A. Yes.
Q. What did you do there?
A. Well, we just got out and walked around and went inside of the Freight House.
Q. Who did you see there?
A. Well, I didn't know any of the men up there. I don't know who all was there.
Q. You didn't know any of the people there?
A. No, sir.
Q. That were in the Freight House, is that right?
A. Well no, I didn't know any of them that was in the Freight House.
Q. At the time you were at the Freight House, did Mr. Toone show up then?
A. Yes, sir.
Q. Was he there?
A. Yes, sir.
Q. He was there?
A. He was there.
Q. Was he there when you arrived at the Freight House, or did he come up later?
A. I don't remember for sure whether he was there when we got there or not.
Q. Now, did you go into the Freight House?
A. Yes, sir.
Q. And was there any talk or discussion in the Freight House?
A. Well, some, about the work stoppage.
Q. I see.

A. Some of the men didn't know about it.

Q. Did you tell them about it?

A. Well, we discussed it.

Q. How long did you stay at the Freight House?

A. Oh, I would say 10 or 15 minutes.

Q. When you left the Yard Office were the employees still there? Where were the employees that had ben on duty there when you left, back at the Yard Office? Were the employees still in the office? Were they on the outside of the office or where were they when you left, the ones that had been on duty there?

A. Well, some of them were leaving, I believe—let's see, to tell you the truth, I don't remember.

Q. You don't remember where they were?

A. No.

Q. How about the Freight Office, how long did you stay there?

A. About 10 or 15 minutes.

Q. When you all left were the employees that had been on duty there still on duty or did they leave?

A. I believe some of them were leaving as we were leaving.

Q. Some of them were leaving as you were leaving?

A. Some were still there.

Q. Do you remember any of the conversation that occurred in the Freight Office?

A. I beg your pardon?

Q. Do you remember anything particularly that was said by anybody?

A. I beg your pardon?

Q. Do you remember any particular conversation in the Freight Office, anything that was said by anybody, either to them or by them?

A. No, sir, I don't.

Q. You just remember there was a general discussion about the work stoppage, is that right?

A. Yes, sir.

Q. After you all had left the Freight Office, where did you go?

A. We came back around by where we thought Jack Coley lived, where he had moved from. We thought maybe we might see some of the neighbors around to ask about him, or maybe he might be back over there for something. We thought maybe we might get to see Jack Coley.

Q. Did you all see him on the whole trip?

A. No, sir.

Q. After you had failed to find him, did you return to Birmingham?

A. Yes, sir.

Q. About what time did you get back here, if you know?

A. I don't remember the time, but it was dark.

Q. It was dark?

A. Yes, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. Mr. Bentley, when did you get with Red Pennington that Monday?

A. When?

Q. Yes, sir.

A. Well, I don't remember the time. It was somewheres around noon.

Q. Is that your best judgment?

A. As well as I remember.

Q. Where did you get with him?

A. I beg your pardon?

Q. Where did you get with him.

A. Down at the main gate.

Q. What were you doing at the main gate at noon?

A. I just went down by the main gate.

Q. Were you curious?

A. Well, I just wanted to see if the work stoppage was over.

Q. All right now what did you do when you got down to the main gate to find out whether the work stoppage was over?

A. I didn't do anything.

Q. Well, that's the reason you went down there, wasn't it, to find it out?

A. Yes.

Q. Did you ask anybody about it?

A. I didn't have to ask, I could tell that by the crowd being on the outside of the fence, and out on the street.

Q. Now how many people would you say were there at noon on Monday?

A. Oh, I would say around 75 or 100.

Q. Doing some whittling too, weren't they?

A. I don't remember.

Q. Don't you know, Mr. Bentley, that there were some people sitting around at that gate, sitting around in the crowd, with open knives, doing some whittling?

A. No, sir, I do not.

Q. Do you remember when you gave a deposition in this case in November, about five weeks after this work stoppage happened? You do, don't you?

A. Sir?

Q. Don't you remember that?

A. I remember what?

Q. Do you remember coming down here?

A. Yes, sir.

Q. And giving some testimony about five weeks after this thing occurred?

A. Yes, sir.

Q. I will ask you whether or not at the time you gave that testimony this question was asked you, and whether or not you gave this answer?

Mr. Pettus:

What page is that?

Mr. Gibson:

That is page 15, right at the top of the page.

"Q. What were the hundred people doing that you saw at the gate?

"A. They were sitting around talking, some whittling." Did you give that answer?

A. I don't remember whether I did or not.

Q. All right, sir. How long did you stay down at the main gate with this crowd of a hundred people?

A. Oh, I would say to the best of my memory, that I can remember, around 30 or 40 minutes.

Q. And where did you go then?

A. I believe I went up to Red Pennington's, as well as I remember.

Q. Was that where you got with Bruce Barnett?

A. Yes.

Q. How long have you known Bruce Barnett?

A. I have been knowing Bruce by face about 4 years; by name about a little over a year now.

Q. Did you know him as working up around Decatur at one time?

A. Well, I have known him since I have been working here in Boyles.

Q. You didn't know him when he was up there?

A. I don't remember when he was up there.

Q. You used to work up there in Decatur, didn't you?

A. Yes, sir.

Q. When did you come to Birmingham?

A. November 3, of '51.

Q. Whose idea was it to make this run up to Decatur on Monday afternoon?

A. Red's.

Q. Did he tell you what he was going for?

A. Yes, sir.

Q. What did he tell you he was going for?

A. To try to locate Jack Coley, and plan a fishing trip.

Q. Say that again, please.

A. We went to see Jack Coley, to plan a fishing trip.

Q. To plan a fishing trip?

A. Yes, sir.

Q. When did you figure to go on this fishing trip?

A. Well, we didn't have any exact date, as well as I remember.

Q. Mr. Bentley, I understood you to say you went up there to see him to plan a fishing trip?

A. Ye, sir.

Q. When were you planning on fishing?

A. Well, I don't remember, just try to get a date to, for it, for a fishing trip.

Q. Was Bruce Barnett going fishing?

A. Yes, sir.

Q. Did he tell you that is what he wanted to do too?

A. Well, we were all talking of going fishing.

Q. You didn't have any special time in mind, to go fishing?

A. Well, at the time, I don't remember.

Q. You wouldn't ride 90 miles one way and 90 another to make plans for a fishing trip that you didn't have any idea when you were going to make it, would you?

Mr. Byrd:
We object to that, argumentative.

The Court:
Sustained.

Mr. Gibson:
All right.

Q. Did Red Pennington tell you that he had telephoned to Decatur and tried to locate Jack Coley before you left?

A. No, sir.

Q. He didn't mention that to you?

A. No, sir.

Q. He didn't tell you that he had called the Yard Office and that they told him they didn't know how to locate Jack?

A. No, sir.

Q. All right. About how long did it take you to drive up to Decatur?

A. Well, I don't remember.

Q. Give us your best judgment about it? What time of day would you say you got there?

A. Around 4:00 or 4:30.

Q. And you tell us that your sole mission for going up there was to find Jack Coley?

A. Yes, sir.

Q. And make some plans for some fishing trip?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. After you went to this place where you say Jack Coley used to live you found that he was not home, and the house was vacant, you then went to the Yard Office?

A. Yes, sir.

Q. And you had only one reason for going to the Yard Office, and that was to find Jack Coley?

A. Yes, sir.

Q. Now, Mr. Bentley, it is a fact, isn't it, that a railroad man who moves his place of residence, vacates one house and moves to a new address, is required to furnish some one at some office with that new address, isn't he?

A. He is supposed to.

Q. You switched at Decatur a while, didn't you?

A. Yes, sir.

Q. Are you familiar with the Railroad Company setup there up there?

A. I was at the time, yes, sir.

Q. All right, sir. Now then, to what person was it Coley's duty to report his new address, if he moved?

A. Repeat that, please, sir.

Q. If Coley moved, he had to report his new address, didn't he?

A. He should have, yes, sir.

Q. All right. Now, who would he make that report to if he moved?

A. To the call boy, chief caller.
Q. And is a record kept of that?
A. Yes, sir.
Q. Who keeps that record?
A. Sir?
Q. Who keeps those records.
A. Well, the chief caller I reckon.
Q. When you got to the Yard Office and you asked somebody if Jack Coley was around, is that right?
A. Yes, sir.
Q. And you received a negative answer?
A. What is that?
Q. Somebody said "No"?
A. Yes, sir.
Q. Well, did you ask the call boy where he was living?
A. Well, I asked somebody, I don't remember who the call boy was at that time. I don't remember if I asked any certain one, I just asked, I remember asking if Jack Coley was there.
Q. Well, we've been over that. You asked if Jack Coley was there, and they said he was not. Then did you ask where he was living now?
A. I don't remember if I did or not.
Q. Well, you would remember if you went up there to find him if you asked people where he lived, wouldn't you?

Mr. Byrd:
We object to that as argumentative.

The Court:
Sustained.

Q. All you did, or the only purpose you had for going to the Yard Office, the three of you, you had

driven 90 miles to get up there, was to locate Jack Coley?

A. Yes, sir.

Q. And you tell this jury you didn't ask anybody where he was living?

A. I asked one, if Jack Coley was there.

Q. That's not what I asked you, Mr. Bentley. I asked you whether the three of you who had driven 90 miles to see one man, and had gone to the Yard Office in Decatur for the same purpose, of finding where he was, when you found he was not there, I will ask you to tell this jury whether or not you asked anybody where he lived?

A. Well, I don't remember if I did or not.

Q. Did you hear Red Pennington ask anybody that?

A. I don't remember.

Q. Did you hear Bruce Barnett ask anybody where Jack Coley had moved to?

A. I don't remember if he did or not.

Q. Did anyone of the three of you go and get a Decatur telephone directory and look in it to see whether there was an address listed for Jack Coley?

A. I didn't.

Q. Did you see either of the other two?

A. I don't remember if they did or not.

Q. Did anyone of the three of you do anything else at all to find out where Jack Coley was?

A. I don't remember at present whether we did or not, other than just ask.

Q. Ask whether he was working, or whether he was there?

A. Yes, sir.

Q. And they said he was not?

A. Yes, sir.

Q. There are three shifts, there were three shifts up there in the Yard, weren't there?

A. You man at present?

Q. No, at that time, they were working more than one shift?

A. Yes, they were working three shifts.

Q. And if you got up there at 4:00 o'clock, you got up there shortly after the beginning of the second shift?

A. Yes, sir.

Q. Who was it that you asked whether or not Jack Coley was on the first shift?

A. I don't remember.

Q. Now, did you ask anybody whether he was working on the third shift?

A. I don't remember if I did or not.

Q. The only thing that you remember, the only effort that you remember that you made, or anybody made, to find Jack Coley, after driving 90 miles for the sole purpose of locating him, was to ask whether he was there, is that right?

A. Ask that one again.

Q. I say the only effort any of you all made to locate Jack Coley up there in Decatur was to walk in the Yard Office and ask if he was there?

A. I don't remember.

Q. That's all you did to find him, wasn't it?

A. I don't remember.

Q. All right, sir. Well, now, let's see if you remember who was the first person to mention the work stoppage or strike in Birmingham?

A. The first person who mentioned it?

Q. Yes, inside of the Yard Office.

A. I don't remember for sure, but I believe it was a switchman, Harry Dublin, asked me what was going on down at Boyles.

Q. What did you tell him?

A. I told him that there wasn't anything, everything was at a standstill.

Q. Did he ask you anything about pickets?

A. I believe he asked if there was any pickets, or picket line.

Q. What did you tell him?

A. I told him that I hadn't seen any pickets or picket signs either.

Q. Mr. Bentley, what do you call a picket? Just tell these gentlemen here what you think a picket is.

A. He is supposed to be a man, or so I understand it, with a picket sign in his hand, walking back and forth in front of an entrance, or alongside of an entrance.

Q. There were certainly plenty of people at the main gate entrance when you left it, weren't there?

A. Ys, sir, there were several there.

Q. You said there was a hundred, didn't you?

A. I said, as well as I remember, around a hundred.

Q. Some of them whittling?

A. I don't remember now if they were or not.

Q. Now then, if the group of men, during a walkout or work stoppage or strike, or whatever we call it, if a group of men is clustered around a gate, an entrance to the employer's property, and a number of them are sitting there with open knives, and they are informing people that they are on strike, and asking them not to go in, you don't regard those as pickets?

Mr. Pettus:

We object to that as a hypothetical question. It doesn't hypothesize the facts in evidence, incompe-

tent, irrelevant and immaterial, the witness not properly qualified.

The Court:
I sustain the objection.

Mr. Gibson:
We except. We think the Witness Chapman stated he was put there for the purpose of asking people not to go in.

Q. Now, if you went to the Yard Office to find Jack Coley and failed, finding Jack Coley wasn't the reason you went to the Freight Office, was it?
A. Well, there was a possibility that we could have run up on him—
Q. You expected to find Coley?
A. —at the Freight House.
Q. At the Freight House?
A. Or uptown. We went through town in going to the Freight House.
Q. Did you stop anywhere in town?
A. Nothing only stopped at traffic lights.
Q. You didn't ask anybody if they had seen Jack Coley or knew where he lived?
A. I didn't see anyone that I thought might know Jack Coley.
Q. You went on up to the Freight House and walked in?
A. Yes, sir.
Q. Who was the first person up there you asked about Jack Coley?
A. Well, I don't remember.
Q. Did you ask anybody?
A. I don't remember if I did or not.

Q. Did Red Pennington ask anybody where he was?

A. I don't recall hearing it.

Q. Did Bruce Barnett ask anybody at the Freight House where Jack Coley was?

A. I don't recall hearing him.

Q. Well, you were there?

A. Yes, sir.

Q. All three of you were together all the time, weren't you?

A. Yes, sir, we all three were up there together.

Q. You got out of the car and went right in the Freight House, right together?

A. I don't remember if we all went in together or not.

Q. You were in there together, weren't you?

A. Yes, sir, we was in there together.

Q. And you were also together in the Yard Office previously, weren't you?

A. Yes, sir.

Q. And you stayed pretty close together all the time?

A. Well, not necessarily.

Q. That's not a very big office is it, Mr. Bentley?

A. No, it is a small office.

Q. About what dimensions would you say it had?

A. Well, I would say it was a little smaller than this room.

Q. Now the Freight Office is much smaller than that, isn't it?

A. I don't remember.

Q. Did you hear Red Pennington say anything in the Yard Office about whether or not anyone was working there, or whether they were working or shouldn't work?

A. Where?

Q. Tell us everything you heard Red Pennington say in the Yard Office at Decatur while you were there.

A. Well, I don't remember anything that Red said, only he may have asked about Jack Coley. I don't recall if he did or not.

Q. Well, you are the one that asked about Jack Coley, weren't you?

A. I did ask about Jack Coley.

Q. Yes, sir, because you knew most of those people there?

A. Yes, sir.

Q. Did you introduce Red to any of them?

A. I don't remember now.

Q. How long would you say that you stayed at The Freight House?

A. Oh, 10 or 15 minutes.

Q. What else did you talk about?

A. I don't remember now.

Q. So when you walked in that Freight House, they call that—I mean the Yard Office—they call that Oakworth, on the railroad, don't they?

A. Yes, sir.

Q. You found several people in there?

A. Yes, sir.

Q. And all of them were going about their business, as well as you could remember?

A. Well, they were just sitting around, wasn't anything to do, just all sitting in the Yard Office, switchmen, what switchmen were up there.

Q. Well, the clerks, that was their place of business, wasn't it?

A. Some of them.

Q. So far as you could tell, things were normal there when you got there?

A. Yes, sir.

Q. And the same thing is also true of the Freight House when you three got there?

A. Well, I'm not familiar with their work.

Q. You didn't see anything, there wasn't any sign of a disturbance around the Freight House?

A. No, sir.

Q. You didn't notice anything unusual going on?

A. No, sir.

Q. There were several people in there and they were sitting at desks, working, so far as you could tell?

A. Yes, sir.

Q. And when you left the Yard Office that situation was no longer true, was it?

A. The Yard Office?

Q. Yes, sir, the Yard Office. When you walked in they were working, and when you walked out they were leaving, that's true, isn't it, Mr. Bentley?

A. Well, I don't remember who left first. I didn't pay any attention when we left, we just left.

Q. They were quitting work, weren't they, when you left?

A. I don't know that they were or not.

Q. You don't know that?

A. No, sir.

Q. You were right with Red Pennington all the time, weren't you?

A. Well, I was with Red.

Q. You went in with him, and stayed with him and left with him?

A. Yes.

Q. That's right, isn't it?

A. Yes, I left with Red, yes, sir.

Q. And when you got to the Freight House, things looked normal, but when you left the Freight House the other employees were leaving too, weren't they?

A. Well, I don't remember if they were or not. Thy might have been, they might not have been. I didn't pay any attention.

Q. You don't recall too well about what happened on that trip, do you?

Mr. Byrd:

We object to that as an argument.

The Court:

Sustained.

Q. Some of the people at the Freight House left before others, didn't they?

A. I don't know, I couldn't tell you.

Q. Don't you recall that there were two men who remained in the Freight House after the rest had left?

A. No, sir.

Q. You don't remember that?

A. No, sir, I don't recall that.

Q. Did you have a newspaper when you left Birmingham?

A. Sir?

Q. Did you have a newspaper when you left Birmingham.

A. There was a newspaper in the car.

Q. Whose was it?

A. I don't know.

Q. Did it have any reference in it to a wildcat strike, or other strike at Boyles?

A. I think there was something in it about the strike, or whatever it was.

Q. You know there was, don't you?

A. As well as I remember there was.

Q. Did you take that newspaper in and show it around in the Yard Office at Oakworth?

A. No, sir, I didn't.

Q. Who did?

A. I don't know who did.

Q. Somebody did, didn't they?

A. Well, it was shown, but who did it, I don't know.

Q. By one of you three, was it?

A. By one of us, as well as I remember.

Q. You don't know which one?

A. I don't know who did it.

Q. Did the three of you take that newspaper and go over to the Freight House, and also walk around showing it to people? That's true, isn't it?

A. There was a newspaper over there, but I don't know how it got up there, I don't remember.

Q. You know the three of you took a paper to Decatur, don't you?

A. Yes, sir.

Q. And that is the paper you used in the Yard Office?

A. Yes, sir.

Q. To show the people?

A. Yes, sir.

Q. Now where did you get the paper you used in the Freight Office?

A. It was probably the same paper. I am not saying it was because I don't know how it got there, who carried it, I don't remember.

Q. You didn't have it at any time?

A. I don't believe I did, as well as I remember.
Q. Well, did Bruce Barnett have it?
A. I don't remember who had it.
Q. There were only three of you?
A. Yes, sir.
Q. You, Pennington and Barnett?
A. Yes, sir.
Q. And whoever it was, it was one of you three?
A. Yes, sir.
Q. And he first who had it walked around to first one desk and then another in the Freight House and showed it to the people there in the Freight House?
A. Well, it was shown. Everybody wanted to see it, they didn't have to carry it around to show it to every one. The way they did at the Yard Office, everybody just huddled around and looked at it.
Q. In other words, as soon as you appeared with a Birmingham paper everybody left their desks and clustered around for a look at it, is that what you tell this jury?
A. Yes, sir.
Q. Do you know Mr. Petty, the chief clerk at the Freight House?
A. No, sir.
Q. Do you know a man named Petty?
A. I have heard that name, heard of a man named Petty, I don't know him.
Q. An L&N employee?
A. Yes, sir.
Q. In Decatur?
A. Yes, sir.
Q. Do you know an old man named Smith?
A. No, sir.
Q. Did you hear Red Pennington say anything to either one of them in the Freight House or outside of the Freight House on that occasion?

Mr. Pettus:

We object to that. The witness says he doesn't know them, may it please the Court.

The Court:

I sustain the objection.

Q. Did you hear Red Pennington say anything to anybody, either inside or outside of the Freight House?

A. Well, we were all talking.

Q. What were you talking about?

A. Well, just different things, general conversation. Some were talking about what was in the paper, about the work stóppage.

Q. As a matter of fact, when you left the Freight House, the three of you, with that newspaper, Mr. Bentley, I mean when you left the Yard Office, you were on your way to the Freight House to show that paper around, weren't you?

A. No, sir.

Q. You didn't go there for that purpose?

A. As well as I recall, we didn't.

Q. Nobody at the Yard Office suggested you take that newspaper over to the Freight House and show it around?

A. I don't remember.

Q. Do you know Mr. Hardwick?

A. Mr. Hardwick?

Q. Yes.

A. Yes, sir.

Q. Is he an old gentleman who has been in bad health?

A. I don't know about his health.

Q. You heard he had had a heart attack prior to the time you went up there, didn't you?

A. No, sir.

Q. Did you hear Red Pennington talk to him in the Yard Office?

A. I don't recall if he did or not.

Q. Have you told this jury everything that you remember, Mr. Bentley, about that Decatur trip?

A. So far as I can recall, I have.

Mr. Gibson:

All right, you may come down.

Mr. Pettus:

Come down.

(Witness excused.)

The Court:

Call your next witness.

Mr. Pettus:

Mr. Bruce Barnett.

Mr. Byrd:

May this witness be excused, Your Honor?

The Court:

The witness may be excused unless there is objection.

BRUCE BARNETT, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Is your name Bruce Barnett?

A. That's right.

Q. Are you one of the Defendants in the case?

A. That's right.

Q. Where do you live, Mr. Barnett?

A. 4146 38th Avenue North.

Q. What is your job, are you employed by the L&N?

A. Yes.

Q. What is your job?

A. Locomotive fireman.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What is that?

A. BofLF&E.

Q. What is that?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you attend this meeting at Parker's house on Sunday, October 23?

A. I did.

Q. And you have heard the various names called out as being there?

A. Yes, sir.

Q. Have you got anyone to add or subtract from the ones that have been called out?

A. No, sir, I haven't.

Q. Do you recall about the time that the meeting started?

A. It must have been around 4:30.

Q. About 4:30?

A. Yes, sir.

Q. Did you say anything at the meeting?

A. No, sir, I did not.

Q. Can you recall what anyone else said, and if you can, name the person and state what he said?

A. I don't remember hearing anyone say anything about the meeting, because I didn't pay any attention to what was going on.

Q. You didn't pay any attention to it?

A. No, sir.

Q. Do you recall what the subject of the meeting was?

A. Well, some of them said that they was going to discuss the matter of getting the hostler helpers, keep them from pulling them off.

Q. Was that the subject that was discussed there?

A. Yes, sir.

Q. How long did the meeting last?

A. I don't know. I didn't stay there over 25 or 30 minutes, and I left. I didn't stay until all of them was gone. There was still some in the basement.

Q. There were still some there?

A. Yes, sir.

Q. Did you leave by yourself?

A. Yes, sir.

Q. Where were you Sunday night?

A. Sunday night?

Q. That is right after the meeting?

A. Well, I left there and went home and stayed until around 7:00 o'clock.

Q. Then where did you go?

A. I went down to the South Yard.

Q. Went down to the South Yard?

A. Yes, sir.

Q. What did you do there?

A. I went down there to ask a fellow about using a fishing camp he has got in Pensacola, Florida.

Q. Do you recall the man's name?

A. Ed Weldon.

Q. Ed Weldon?

A. Yes, sir.

Q. Did you make arrangements to use the camp?

A. I did.

Q. About what time was that?

A. It was around 7:00 o'clock.

Q. Then where did you go to?

A. I went back home.

Q. Did you stay at home that evening?

A. I stayed there until 9:00 o'clock or after.

Q. Where did you go at 9:00?

A. I went down to Rex's Barbecue.

Q. How long did you stay there?

A. Oh, maybe a couple of hours.

Q. Were you in the cafe all the time or were you wandering around outside some?

A. No, sir, I went in the cafe and drank a Coca-Cola, and run into Howard Anderson, and we went outside and sat in his car. I imagine it was seventy-five or maybe a hundred yards from the cafe.

Q. Did you all stay in and around the car then for a while?

A. Yes, about an hour and a half, maybe longer.

Q. Then what did you do?

A. I got out of his car and got in mine and went home.

Q. And the next morning, that is Monday morning, did you see Reese Thomas?

A. I saw Reese Thomas, it must have been around 9:00, 9:00 or 9:30.

Q. Where did you see him?

A. At the Passenger Station on Morris Avenue.

Q. How long did you stay there, how long did you stay at the Passenger Station, or did you leave?

A. I walked up to the corner there on Morris Avenue and 20th Street, stood around there a while, and went over to the cafe and stayed over there across the street, went back out there, stood around a little while again, it must have been around 10:30 or 11:00 o'clock, and Reese come by, and I rode out to Boyles with him.

Q. Drove out with him?

A. Yes, sir.

Q. Where did you all go?

A. We went down to the gate there at the Master Mechanic's office.

Q. Did anyone else come up there?

A. I don't remember. There was a car was there. I don't remember, whether I noticed whether it was there whenever we first drove up or not.

Q. Did Mr. Ben Mitchell come up at any time there?

A. They come up there after that.

Mr. Gibson:

We object to leading him. Counsel is asking yes or no questions throughout.

The Court:

I sustain the objection.

Mr. Pettus:

I am leading him to save time. These occasions have been repeated over and over again.

Mr. Gibson:

I want to hear the witness testify.

Q. Were you there when Mr. Mitchell drove up?

A. I was.

Q. Did you say anything to Mr. Mitchell?

A. I don't think I did.

Q. Did Reese Thomas say anything to Mitchell in your hearing?

A. Well, Mr. Mitchell said that they had some bills of livestock or something they wanted to go in there and see about, and Thomas told him to go ahead, and we would hang around there, and if there was any livestock, if they wanted it moved, we would go and move it for them.

Q. How long did you stay around there?

A. I stayed around there until Reese left. I left with him.

Q. Did you leave with him?

A. Yes.

Q. Do you know Red Pennington?

A. Yes, sir, I do.

Q. Did you see him that same day?

A. I did.

Q. What was the occasion for your seeing him?

A. I had started home, and he lives right close to where I do.

Q. Did you go with him?

A. I rode with him to Decatur.

Q. Did you all three go over to Decatur?

A. Yes, sir.

Q. What did you do in Decatur?

A. Well, we went up there to the Yard Office, first went by the house up there, he told me he was going to see a switchman, I don't remember what

his name was, I didn't know him, he wanted to see him, and we went by his house, and he come back and said there wasn't anybody there. So we went down to the Yard Office to find out where he lived.

Q. Was Bentley with you too?

A. Yes, sir.

Q. About what time did you get to the Yard Office?

A. Now, I don't remember. It must have been around I imagine around close to 4:00 o'clock.

Q. Now, did you go into the Yard Office?

A. I did.

Q. Do you know any of the employees that were on duty at that place?

A. I know Mehaffey and Glasscock.

Q. Mehaffey and Glasscock?

A. Yes, sir.

Q. Do you know Special Agent Toone?

A. No, sir, I don't.

Q. Was there any Special Agent that you knew there, that is was anyone pointed out to you as a Special Agent?

A. No, sir, there wasn't.

Q. Did you have any conversation with Mehaffey?

A. I don't remember whether I did or not.

Q. Did Pennington have any conversation with him?

A. I don't remember whether Pennington did or not. There was—

Q. You all three went into the Yard Office?

A. Yes.

Q. And how long did you stay in there?

A. We didn't stay in there long, maybe 10 or 15 minutes.

Q. Now, was there any talking back and forth between you, the three of you, and people that were in that office there?

A. No, sir, there wasn't.

Q. There wasn't anything said?

A. Not between us. There was between us three. Some of them asked what was going on at Boyles, and they told them there wasn't anybody working, and they wanted to know if we had any proof there wasn't nobody working. Some of them said there was a newspaper out there in Pennington's car. "That's all we know", and they wanted to see, to go out there and get it, and let them see it. Some of us went and got the paper and showed it to them.

Q. It was a Birmingham newspaper?

A. Yes, sir, Birmingham paper.

Q. That was brought into the Yard Office?

A. That's right.

Q. Did you all then leave the Yard Office at some point there?

A. They asked us would we carry that paper to the Freight House.

Q. To the Freight House?

A. And let them people up there see it.

Q. Did you all take the newspaper to the Freight House?

A. I don't know whether we had the paper whenever we left or not. I am pretty sure we did.

Q. Did you go to the Freight House?

A. We went to the Freight House.

Q. Did you know any of the employees on duty at the Freight House?

A. No, sir, I didn't.

Q. Did you go into the Freight House?

A. I went to the door.

Q. Went where?

A. To the door there, back platform.

Q. Was there any Special Agent that you saw at the Freight House?

A. No, that I know of.

Q. Not that you know of?

A. No, sir.

Q. Were there some people standing around there that you didn't know?

A. Yes.

Q. Did you go into the Freight House yourself?

A. I just went to the door.

Q. You just went to the door?

A. Yes, sir, to the shed.

Q. Did you carry on any discussion with anybody in the Freight House, any employees there, or either did Bentley or Pennington?

A. No, didn't.

Q. You didn't?

A. No, sir.

Q. Did you hear any conversation or discussion that was carried on by Bentley or Pennington with any of the employees who were in there?

A. There was some of them talking about what was in that paper.

Q. They were discussing that paper, were they?

A. Yes, sir.

Q. What was in the paper, the work stoppage in Birmingham?

A. Yes, sir.

Q. That was the subject of the discussion?

A. Something to that effect.

Q. How long did you all stay at the Freight House?

A. We didn't stay there but just a few minutes, for five or ten minutes.

Q. Then did you leave the Freight House?
A. We did.
Q. Where did you go then?
A. Come back home.
Q. You came back to Birmingham?
A. Yes, sir.
Q. Do you know about what time you arrived back?
A. No, sir, I don't.

Mr. Pettus:
That's all.

Cross Examination.

By Mr. Gibson:
Q. When did you go on that fishing trip?
A. What fishing trip?
Q. You three went up to Decatur to see a fellow to make some plans about going fishing, didn't you?
A. I didn't say I went up there to see about going on a fishing trip, did I?
Q. Didn't you hear Bentley say that just before you took the stand?
A. Well, I didn't say it.
Q. What was your mission in Decatur, Mr. Barnett?
A. Mr. Pennington asked me to ride up there with him. He didn't say why he was going.
Q. Did you ask him why?
A. He just asked me did I want to ride up there with him, and I told him I would.
Q. You know him pretty well, don't you?
A. I live right close to him.

Q. You didn't say "Red, what do you want to go to Decatur for"?

A. No, sir.

Q. Or anything like that?

A. No, sir, I didn't.

Q. Sir?

A. I didn't.

Q. At any time on the trip up there?

A. No, sir.

Q. He didn't tell you why he was driving 90 miles on Monday afternoon, did he?

A. If he did I don't remember it.

Q. And you tell the jury you have no idea why Red Pennington was driving from Birmingham to Decatur on Monday afternoon during the work stoppage?

A. No, sir, I don't. He just asked me did I want to ride up there with him.

Q. When was it you first found out what his mission was up there?

A. He stated he was going up there to see Coley, he didn't say why he was going, he didn't tell me why he was going.

Q. Did you know Coley?

A. No, sir, I didn't know him.

Q. He didn't tell you he was going up there to see Coley to plan a fishing trip with Coley at some later time?

A. Not that I remember.

Q. Did you ask him whether he had telephoned Coley before he started?

A. I did not.

Q. Did you have anything to drink with you that day?

A. I did not.

Q. Did you smell it on anybody else in the automobile with you?

A. No.

Q. Who was that that you stopped to pick up on the way up to Decatur?

A. Not anyone as I know of.

Q. Not anyone?

A. No, sir, not that I know of. I didn't see anyone except me and Red and Bentley.

Q. In your car?

A. That's right.

Q. Where was R. T. Brannum, Little Dick Brannum, when you first saw him?

A. He was at the Freight House.

Q. In Decatur?

A. That's right.

Q. Where was Armour Clark when you first saw him?

A. I don't remember seeing him.

Q. That is Ace Clark?

A. I don't remember seeing Clark.

Q. You know him, don't you?

A. I know a switchman out there they call Clark.

Q. You do?

A. They call him "Big Six" I believe is what they call him.

Q. You saw him in Decatur that day?

A. I did not.

Q. You did not?

A. No.

Q. Now then, when you drove up to the Freight House I believe all three of you got out of the car, is that right?

A. At the Freight House?

Q. I beg your pardon, the Yard Office.

A. Yes.
Q. You went in the Yard Office?
A. That's right.
Q. Did you see anybody in there that you knew?
A. Glasscock and Mehaffey.
Q. Is that all?
A. That's all.
Q. You didn't know Mr. Hardwick?
A. No, sir.
Q. Who was it that asked if Jack Coley was there?
A. I don't remember who it was, whether it is Pennington or Bentley that asked him about it.
Q. Well now, you went over there to find out where Jack Coley lived?
A. Yes.
Q. That's the reason you went over there. wasn't it?
A. Yes.
Q. All right, sir. Then who was it that asked in the Yard Office where Jack Coley was living?
A. I don't remember who it was because I didn't know Jack Coley.
Q. Somebody asked where Jack Coley was living, didn't they?
A. I imagine they did. I was standing there with them, I wasn't looking for Jack Coley because I didn't know him.
Q. You stayed pretty close to Red Pennington and Bentley all the time you were in there, didn't you?
A. I don't know, I don't remember whether I did or not.
Q. Did you fellows stand around there in one place all the time or circulate around a little?
A. I don't remember. That's just a small building there.

Q. Well, its about as big as this room, isn't it?

A. I wouldn't think so.

Q. How many desks are in there?

A. I don't know, I never have counted them.

Q. When you got there was everybody working?

A. I imagine they was.

Q. They did appear to be attending to their duties?

A. Yes.

Q. There wasn't anything unusual about the looks of the place?

A. Not that I noticed.

Q. You walked in, the three of you?

A. Yes, sir, that's right.

Q. Did you stay near the entrance, or did you go elsewhere in the Yard Office?

A. Well, there was kind of a—when you go in, it is kind of a little lobby-like. We was there in it. I imagine that is where the switchmen's all change clothes.

Q. You never got out of there?

A. How was that?

Q. You never went back where any desks were?

A. No.

Q. And Red Pennington didn't go where any desks were?

A. I never noticed whether he did or not.

Q. Bentley didn't go back where anybody was sitting at a desk?

A. I didn't know whether he did or not.

Q. Were you the man that went out and got the newspaper?

A. I don't know whether I did or not, I may have been.

Q. Sir?

A. I say I don't know whether I was or not.

Q. You don't know?

A. I don't remember.

Q. You remember somebody got it, don't you?

A. Some one of us three went and got it, but I don't remember which one it was.

Q. All of the people in the Yard Office all clustered around you three to look at the newspaper?

A. Yes, they did, they all took the paper and looked at it.

Q. The newspaper had a write-up in it of this trouble at Boyles, didn't it?

A. That's right.

Q. As a matter of fact, it had a big headline that said there was a wildcat strike at Boyles?

A. I don't remember what the headlines was.

Q. Something like that?

A. That's about like the News. I imagine it was.

Q. Now then, after you left the Yard Office you went to the Freight House?

A. That's right.

Q. Still looking for Coley?

A. No, sir, they asked us there at the Yard Office would we carry that paper to the Freight House and let them fellows see it.

Q. So you went to the Freight House with that newspaper as a favor to somebody in the Yard Office?

A. They asked us would we carry it up there.

Q. When you got there—you did carry it over there?

A. Yes, sir.

Q. When you got there, everything appeared normal?

A. That's right, Mehaffey and Glasscock was standing out on the platform there. I don't know, it must have been eight or ten men out there with them.

Q. What did you see them do, if anything?

A. They were standing there on the platform, wasn't doing anything.

Q. Was the door open?

A. Sir?

Q. The place was open for business?

A. There was a door there at the end of the platform open, the only one that I noticed open.

Q. That is the door that leads into the Freight Office, isn't it?

A. Well, that's the onliest door that I noticed.

Q. Speak up a little.

A. I say that's the onliest door that I noticed was open.

Q. That is the door that leads from the platform into the Freight Office?

A. That's right.

Q. Is that the door you went in?

A. I didn't go in; I went to it.

Q. Excuse me. I think you said only two of you went in, and that those two were Pennington and Bentley, weren't they?

A. I didn't say two went in.

Q. What did you say?

A. I said I went to the door.

Q. And stopped?

A. That's right.

Q. Well, did two go in?

A. I never noticed whether they went in or not.

Q. All right, did they stay out where you were?

A. I didn't pay any attention to them.

Q. Who had the newspaper?

A. I don't remember who had the newspaper. I never noticed. There was some there that I didn't even know. They may have had the paper.

Q. If somebody went in to show the employees in the Freight House. as a favor to somebody in the Yard Office, a newspaper, it wasn't you?

A. No, sir.

Q. But all three of you carried the paper over there, didn't you?

A. Some of them on the platform there was the one had the newspaper.

Q. I understood you to say that you three went over to the Freight House to take a newspaper.

A. We did, but some on the platform, standing on the platform maybe took the newspaper when we got there.

Q. I see.

A. I don't know who it was.

Q. You mean none of the three of you showed the newspaper around inside?

A. No, sir, not that I know of.

Q. Did all of you stay out on the platform?

A. I don't know whether Red and them did or not. I did.

Q. You did?

A. I never noticed where they was at.

Q. Who was it that took the newspaper in?

A. I don't know that.

Q. You know somebody did?

A. It may have been some of them employees up there so far as I know.

Q. When you left there some of them had already begun to leave, hadn't they?

A. I never noticed whether they had or not. When we left there was still a bunch on the platform, several.

Q. Now, let's talk about the meeting at Parker's just a little bit. Who was it that told you there was

going to be a meeting at Shorty Parker's that Sunday afternoon?

A. A colored fireman. Will Ross.

Q. A colored fireman named Will Ross?

A. Yes, sir.

Q. When did that take place?

A. When I was getting off from work, I was there at the washhouse, washroom, I was fixing to leave, and he told me about it.

Q. What time of day was it?

A. 3:00 o'clock.

Q. You were fixing to leave and go home?

A. I was fixing to go home.

Q. Instead of that you went to Shorty Parker's house?

A. I did not.

Q. Where did you go to?

A. I went home.

Q. After you got home, what did you do?

A. I took a bath and eat supper.

Q. You had been working since 7:00 then?

A. That's right.

Q. About that time?

A. Yes, sir.

Q. After you ate, then where did you go to?

A. I went to Rex's.

Q. Rex's Cafe?

A. That's right.

Q. Arriving there at what time?

A. It must have been around 4:15 or 4:20, something like that.

Q. Did you see anybody there that you later saw at the meeting, at Rex's?

A. I don't remember if I did.

Q. Mr. Barnett, did you go from Rex's to the meeting alone?

A. I did.

Q. In your car?

A. That's right, I left there by myself.

Q. Did Will Ross, this colored fireman, tell you what the meeting was about?

A. He just said they was going to have a meeting out there of some kind, and asked me was I going. I told him I didn't know anything about it.

Q. He said "They was going to have a meeting"; who was "they"?

A. Said a bunch was going to have a meeting up there.

Q. A bunch?

A. Yes.

Q. Did you understand him to mean a bunch of Railroad employees?

A. He didn't say. I didn't understand whether he meant Railroad employees or what.

Q. A bunch of steelworkers?

A. Well, it could have been a bunch of cotton pickers. for all I know.

Q. You went up there to see what, a bunch of what?

A. That's right.

Q. And when you went up there you didn't even know you were going to a meeting of Railroad people, did you?

A. I didn't know if they was all going to be Railroad men.

Q. Did you know some of them would?

A. I figured part of them would be, by being at Shorty Parker's.

Q. You figured part of them would be cotton pickers too, didn't you?

Mr. Byrd:
We object to that.

A. I didn't know what they might be.

The Court:
I sustain the objection.

Q. Now, when you got up there did you see a crowd of men around there?
A. Yes, there was several up there.
Q. And you have named all of them, or heard the names of all that were there?
A. I have heard their names.
Q. Of course in a short while you all went in there?
A. That's right.
Q. That is about what you would call a two-car garage, isn't it?
A. Yes, it looked to be about a two-car garage.
Q. Would it be about 20 feet by 20 feet in size?
A. Something like that.
Q. Paved floor or dirt or slag or what?
A. I don't remember what kind of floor it had in it.
Q. Did you all leave the doors open or close them?
A. They were left open.
Q. Was there anybody standing outside during the meeting?
A. I don't know whether there was or not, I never noticed.
Q. Now you told us I think that you don't remember anything that anybody said?
A. I didn't pay any attention to it.
Q. You went up there to a meeting, didn't you?
A. Yes. I went.

Q. And when you got there you found a meeting, and you entered into it?

A. Yes.

Q. When did you find out what the purpose of the meeting was?

A. Well, after I got up there and heard a few of them discussing what they were going to do, well I didn't pay any more attention to it. Myself and Howard Anderson walked over there in the corner and was standing there talking.

Q. Now that meeting consisted of several small groups of men in different parts of that garage talking to each other, didn't it?

A. That's right.

Q. There wasn't anybody who spoke to the group as a whole, was there?

A. Not that I know of.

Q. But somebody told you, you heard somebody say that it was a meeting about the outside hostler helper jobs?

A. There was some one that mentioned that.

Q. Now, who besides you and Howard Anderson was in the group that you were talking to?

A. I don't remember whether there was anybody or not.

Q. At any time?

A. Oh, I imagine there was at times, just walking around from one bunch to the other, some of them was, talking.

Q. Well, tell us somebody you heard say something in that meeting besides Howard Anderson.

A. I don't remember any of the rest of them saying anything to me about it.

Q. The best you recollect, you and Howard Anderson had a meeting there in the garage, and talked, and you don't remember anything anybody else said?

A. No, sir, I don't.

Q. About how long did you stay at the meeting, Mr. Barnett?

A. I don't imagine I stayed there over 30 minutes, if that long.

Q. Were you there when Kennedy and Logan and Vann left?

A. I don't remember whether I was or not.

Q. You remember they were there, don't you?

A. I don't recall seeing them. They could have been.

Q. So far as you recollect, you were the first man to leave the meeting?

A. That I know of.

Q. Sir?

A. So far as I recall. I didn't see anyone else leave.

Q. You remember giving your deposition here some five weeks or so after the work stoppage?

A. That's right.

Q. I will ask you whether or not at that time—

Mr. Pettus:

What page is this?

Mr. Gibson:

This is page 16.

Q. At that time these questions which I will read to you were asked you, and these answers which I will also read to you were given by you:

"Q. Now tell us everything you remember that happened at that meeting from the time you met,

playing with the dogs. and went inside of the garage, to the time you left?

"A. Well, I don't remember anything particularly after we all went inside, playing with the dogs."

Mr. Pettus:
That is page 16?

Mr. Gibson:
No, excuse me. Did I say 16?

Mr. Pettus:
Yes.

Mr. Gibson:
15.

Mr. Pettus:
What page is it?

Mr. Gibson:
15.

"Q. Have you got a good memory?

"A. Yes, sir.

"Q. This happened just about a month ago, didn't it?

"A. Yes, sir.

"Q. And you mean to tell this Commissioner you remember nothing that happened inside that garage?

"A. No.

"Q. You don't remember a human being that was there except Mr. Anderson?

"A. Howard Anderson.

"Q. Do you remember anybody else that was in there?

"A. No, sir, I don't.

"Q. How long did you stay in there?

"A. About maybe 20 minutes.

"Q. How come you to come out?

"A. I went home.

"Q. Weren't you unconscious while you were in there in any way?

"A. No.

"Q. How did you get a notion to get out of there?

"A. I just took a notion to go home.

'Q. Did you just walk out of the meeting?

"A. Yes, sir.

"Q. Did you leave any of them in there?

"A. There may have been a few.

"Q. Well, were there?

"A. There may have been a few."

Were those questions asked you and did you make those answers when you gave your deposition?

A. I did.

Q. How long in your judgment did you stay in the meeting?

Mr. Byrd:

We object to that as repetition.

The Court:

Overruled.

Mr. Byrd:

We except.

A. I stayed there I imagine about 30, between 30 and maybe 40 minutes.

Q. Now did you hear Mr. Kennedy get up and make a statement about having telephone Jake Paschal?

A. I did not.

Q. Your hearing at that time was normal, was it?

Mr. Byrd:
We object to that.

The Court:
Overruled.

Mr. Byrd:
We except.

A. I imagine it was. It has been a good while ago.

Q. Well, you know it was, don't you?

A. Yes.

Q. Did you hear Mr. Otts get up and make some statement to the people there?

A. He may have. I don't recall if he did.

Q. You say you don't remember about that?

A. No. sir, I don't.

Q. Did you hear Reese Thomas have anything at all to say?

A. Not that I remember.

Q. Did you hear Reese Thomas say that anybody who wouldn't go out on strike to save another workman's job had a yellow streak up his back?

A. Not that I remember.

Q. Did you hear anybody say that?

A. I don't remember of anybody saying anything to that.

Q. Did you hear any reference to the word "pickets" in the meeting?

A. No, sir, I didn't.

Q. Did you hear anyone say "I don't want to picket; I want to be on the baseball bat detail", or words to that effect?

A. Not that I remember of.

Q. You would remember it if you had heard an unusual thing like that, wouldn't you?

A. I imagine I would.

Mr. Byrd:
We object as argumentative.

The Court:
Overruled.

Mr. Byrd:
We except.

Q. When you and Reese Thomas met down at the Passenger Station on Monday, how long had you been there?

A. I don't know how long I had been there; not too long.

Q. You went down there with Red Pennington, didn't you?

A. I think I did.

Q. What business were you and Red planning on transacting at the Passenger Station on Monday morning?

A. Not any; we were just riding around.

Q. Where had you started from, up at the main gate?

A. I am not sure, but I think I got in the car with him at Rex's Barbecue.

Q. And drove to the Passenger Station?

A. That's right.

Q. How lorg did you stay there?

A. 10:00 or 10:30, it may have been a little later.

Q. When did you get there?

A. It must have been around—it was after 9:00 o'clock. I don't remember what time it was.

Q. What did you do all the time while you were down there?

A. Well, I walked up to the corner there on Morris Avenue and 20th Street, stood around a while, and went over to the cafe across the street and drank a cup of coffee, and sat around in there a while and talked.

Q. Who did you talk to?

A. I don't remember who it was. I may have talked to some of the waitresses in there.

Q. I'm talking about while you were standing that hour and a half on Morris Avenue.

A. I didn't stand no hour and a half on Morris Avenue, I was in the cafe part of the time.

Q. How much of the time?

A. I don't know.

Q. You didn't flag down or yell at Reese Thomas somewhere between the Passenger Station and Boyles, did you?

A. No, sir. I was there on Morris Avenue and 20th Street.

Q. You left there with Reese, didn't you?

A. Yes, sir.

Q. And you then went to the Master Mechanic's gate?

A. Master Mechanic's gate.

Q. What was your business at the Master Mechanic's gate?

A. We just rode by there.

Q. You rode by, just riding around, to the Passenger Station with Red Pennington, stayed there a while, then were still just riding around. you and Reese Thomas went to the Master Mechanic's gate?

A. That's right.

Q. That's what you tell this jury?

A. Yes, sir.

Q. All right, sir. You were there when Ben Mitchell and Mr. Woelde came up there?

A. Yes, sir.

Q. Wasn't Letchman there?

A. I don't remember whether he was there whenever we first drove up or not.

Q. Was he there at any time while you were there?

A. He came up there where we was at.

Q. Was Jody Johnson there at any time while you were there?

A. He was not.

Q. Sir?

A. No, sir, he was not.

Q. He was not?

A. No, sir.

Q. What about C. S. Hawkins, was he there?

A. I don't know whether Hawkins was or not. There was somebody in the car that never did get out. I don't know who it was.

Q. Reese Thomas' car was parked blocking the gate, wasn't it, afoul of the gate, wasn't it?

A. It was parked there by the gate.

Mr. Taylor:

Your Honor, that is highly repetitious. He has been over it.

The Court:
I sustain the objection. Let's not repeat the evidence.

Mr. Pettus:
Your Honor, we have a couple of short witnesses that would like to be used now, and get rid of them if we could, if we could break in.

The Court:
Are you through with this witness?

Mr. Pettus:
If they are through with him. He will be available of course in the morning if they want to ask him anything further.

Q. Mr. Barnett, tell the jury whether or not you are the man who shouted at R. E. Thomas inside of the Boyles Yard on Sunday night "Labor trouble; get out of the yard", or anything like that?
A. I did not. I was not in the Yard from around 7:30 after I left the South Yard until I went back to work
Q. You never were up around the Yard Office either, were you?
A. No, sir. I was not.

Mr. Gibson:
All right, sir, you can stand aside.

(Witness excused.)

Mr. Taylor:
Call Mr. Jack Wall, please.

JACK WALL, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Is this Mr. Jack Wall?

A. Yes, sir.

Q. Are you a switchman with the L&N?

A. Yes, sir.

Q. And you were so employed back on October 24, 1955?

A. Yes, sir.

Q. Do you belong to any labor organization on the Railroad?

A. I do.

Q. All right. what is that?

A. Brotherhood of Railway Trainmen.

Q. Now, Mr. Wall, I want to direct your attention to this. Well, I will ask you first if you recall that work stoppage that occurred in October, of last year?

A. Yes, sir.

Q. Directing your attention to Monday, October 24, I will ask you what time you went to work that day, what time was your shift due to go to work that day?

A. 7:55 a. m., sir.

Q. Did you come to the Boyles Yard there for the purpose of going to work that morning?

A. Yes, sir.

Q. What entrance did you come to?

A. The Master Mechanic's gate.

Q. What did you see when you got there?

A. Well, Mr. Baum and Mr. Dewey Cavins is the only ones that I saw at that time.

Q. Were there other people there?

A. Later, yes, sir.

Q. Could you see inside of the Yard?

A. Well, from that vantage point, very little.

Q. Could you hear any activity inside of the Yard?

A. No, sir.

Q. In your experience as a switchman out there for several years, what did that indicate to you?

A. That something was wrong.

Q. Did you have any discussion with anybody about what was wrong?

A. No, sir, I didn't discuss it with anyone, what was wrong.

Q. What did you do, if anything, then, Mr. Wall?

A. Well, I stood and talked to Mr. Baum a few minutes. just general conversation. And later there was some others showed up, and of the group there was a remark made "Let's walk in and see how things look", and we walked on in, looked around, was gone about five minutes, and come back out.

Q. Did you go in with that group?

A. Yes, sir.

Q. About how many were in that group?

A. Oh, six, five or six.

Q. Do you know whether or not they were all of one craft or not?

A. Yes, sir.

Q. What were they?

A. They were all switchmen.

Q. All switchmen?

A. Yes, sir.

Q. Did anybody say anything to you when you started in?

A. No, sir.

Q. Did anybody offer any resistance to your going in?

A. No. sir.

Q. Did anybody threaten you in any way?

A. No, sir.

Q. Did anybody say anything to you when you came out?

A. No, sir.

Q. Now, I believe that is the only time you were around the Yards durring the work stoppage, is that correct?

A. Yes, sir, that's the only time.

Mr. Taylor:

That's all I have. Answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Wall, isn't that the crowd that you went in with, didn't you also have Mr. Chapman, a fireman, to go along with you?

A. That I don't remember, Mr. Simpson.

Q. You haven't been around the Courtroom here during this testimony, have you?

A. No, sir.

Q. Do you know Mr. Chapman, a fireman?

A. Fireman?

Q. What?

A. Is he a fireman?

Q. Yes, sir.

A. Yes. sir, I know Mr. Chapman.

Q. You know Mr. Chapman, a rather big fellow?

A. Yes, sir, that's right.

Q. Did you see him out there that morning?

A. I don't remember.

Q. Did Mr. Baum ask you—first, when you got there and saw Mr. Baum standing there near you, he was standing near the entrance to the Master Mechanic's gate, wasn't he?

A. He was standing in the vicinity, yes.

Q. He was accompanied by another fireman named Cavins, wasn't he?

A. Well, as well as I remember they were not standing together.

Q. Well, they were standing there near the entrance, weren't they?

A. Mr. Cavins' car was parked to the left of the entrance. and he was at his car, and Mr. Baum was on the other side, as well as I remember.

Q. Mr. Baum didn't have a car, did he?

A. No, sir.

Q. He was down there picketing that gate, wasn't he, to keep people from going in?

A. No, sir.

Q. And he told you what was going on?

Mr. Taylor:

Let him answer the question.

Mr. Simpson:

I beg your pardon.

A. Mr. Simpson, there was no pickets, so far as—there was no pickets to my knowledge. There was no sign of any, or any indication of any picketing going on.

Q. You had been through a strike in August, hadn't you, the switchmen had struck in August. didn't they?

A. No, sir, I don't know anything about any—

Mr. Taylor:
We object to that.

A. —switchmen's strike.

The Court:
I sustain the objection.

Q. You are used to seeing a strike with picket signs, signs carried by pickets, aren't you?
A. The only strike I ever saw with any pickets, I mean of signs being carried, was in the March strike.
Q. In the March strike?
A. Yes, sir.
Q. Did you have any signs in the August strike? That was the wildcat strike too, wasn't it?
A. No, now wait a minute, I didn't say nothing about it being a strike.
Q. Well, what was it, a work stoppage?
A. I don't know what it was. I just laid off and didn't report, I didn't go to work.
Q. Did you report sick in August?

Mr. Byrd:
We object to that.

Mr. Simpson:
I withdraw it. I am not going into the August strike.

The Court:
Let's not try another matter.

Mr. Simpson:
No, I am not going to.

Q. But you expected to see pickets with signs marching around there, and unless they had signs, marching around, you tell the jury there wasn't any pickets there, don't you?

Mr. Byrd:
We object.

The Court:
Sustained.

Q. Would you call a man a picket if he didn't have a sign?

A. Unless he made a definite statement that he was picketing, I wouldn't call him a picket, unless he had a sign of some kind.

Q. Unless he admitted he was a picket or had a sign?

A. Yes, sir, he would have to admit to me he was picketing before I would

Q. I understand. Therefore you don't think Mr. Baum was picketing, because he didn't admit he was?

A. No, sir. I am not going to say he was a picket because he didn't act like one.

Q. I realize you are not going to say he was a picket.

A. He made no effort to stop me in any way.

Q. When you got there and addressed Mr. Baum you didn't know what the trouble was, did you?

A. I didn't ask Mr. Baum what the trouble was.

Q. I didn't ask you that. I said did you know what the trouble was.

A. No, sir, I didn't know what the trouble was, no, sir.

Q. And you walked up there to a man standing there, not knowing what the trouble was, saw the Yard shutdown, and you didn't ask him what it was, did you?

A. When you've been around a place 16 years and you walk up to it and see no activity whatsoever, you know something is wrong.

The Court:

Gentlemen, let's not argue with each other, either one, the question or the answer.

Q. You think that if I did that, I would walk up to a man, Mr. Baum, who was there, standing there—

Mr. Taylor:

We object.

Q. —and not ask him what the trouble was?

Mr. Taylor:

We object to what the witness thinks.

The Court:

Sustained.

Q. You tell this jury in that situation, not knowing what the trouble was, you had been working there 16 years, and you walked up, and find Mr. Baum standing there at the gate or near the gate, and you didn't ask him what the trouble was?

Mr. Taylor:

We object to that.

A. I walked up—

The Court:
I sustain the objection to that question.

Mr. Simpson:
All right.

Q. Now, Mr. Wall—

The Court:
He hasn't answered yet.

Mr. Simpson:
I thought you sustained the objection.

The Court:
I overruled the objection.

Mr. Simpson:
I thought you were getting as impatient as I am to get away from here. I beg your pardon.

Q. Did that sort of a thing happen?
A. May I have the question again, please?
Q. No, I'm not going to take time to ask it again, we'll just call that one off. You don't have to answer it.

The Court:
Let's have order, gentlemen.

Q. Now, Mr. Wall, you say you did know Mr. Chapman?
A. I don't—
Q. And you did go through that Yard that morning with a bunch of switchmen?

A. We walked over to the Yard Office.

Q. Over to the Yard Office?

A. Yes, sir.

Q. I will ask you if it is not a fact, in the crowd you were with Mr. Chapman went with you, and went through the Yard to see if there was anybody in that Yard?

A. No, sir.

Q. And when you came out, you reported to Mr. Baum that there wasn't anybody in there?

A. No, sir, Mr. Chapman—

Mr. Simpson:

You can come down, please, sir.

A. Mr. Chapman wasn't in that crowd, no.

Mr. Simpson:

Come down.

(Witness excused.)

Mr. Taylor:

J. W. Huckaby.

The Court:

How long will it take?

Mr. Taylor:

I will ask him three questions.

The Court:

If you will ask him just three questions I will let you put him on, otherwise we will recess.

J. W. HUCKABY, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. This is Mr. J. W. Huckaby?

A. Yes, sir.

Q. You are an engineer with the L&N Railroad?

A. Yes, sir.

Mr. Taylor:

It might be four or five, Your Honor.

Q. And were you on October 24, 1955?

A. Yes, sir.

Q. Was H. M. Baum your fireman at that time?

A. Yes, sir.

Q. During the work stoppage that occurred in October, did you go to the Boyles Yard on Monday morning?

A. Yes, sir.

Q. Did you see anybody restrained from going into the Yard there?

Mr. Simpson:

We object to that as a conclusion.

A. No, sir.

The Court:

That would be a conclusion.

Mr. Simpson:
It invades the province of the jury.

The Court:
I sustain the objection.

Q. Did you see anybody threatened while you were there?
A. No, sir.

Mr. Simpson:
We object to that.

The Court:
Overruled.

Q. Did you see anybody struck while you were there?
A. No, sir.
Q. Did you see anybody intimidated in any way while you were there?
A. No, sir.
Q. Did you see Mr. Baum there?
A. Yes, sir.
Q. Was that your normal place for reporting for work?
A. Yes, sir.
Q. Was that the gate you went in?
A. Yes, sir.

Mr. Taylor:
I believe that's all.

Cross Examination.

By Mr. Simpson:

Q. Did you know whether work was going on in there, Mr. Huckaby?

A. I didn't know it until I got over there.

Q. You didn't know whether work was going on or not?

A. It wasn't that you could hear or see.

Q. You assumed it was, didn't you, before you got there?

A. Yes, sir.

Q. You didn't know anything about a work stoppage?

A. No, sir.

Q. Or strike, did you?

A. No, sir.

Q. Did you ask Mr. Baum what the trouble was?

A. Well, sir, I don't know. Baum was over there. Somebody said there wasn't anything going on, everything was out.

Q. You saw Mr. Baum standing there at the M&M gate, didn't you?

A. Yes, sir.

Q. The Master Mechanic's gate?

A. Yes, sir.

Q. And he was the first man you spoke to, wasn't he?

A. I don't remember.

Q. Did Mr. Baum tell you there was labor trouble, and stay out of the Yard?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. Who told you there was labor trouble?

A. He said they wasn't working, there wasn't any work going on, everybody was out, even the office and all.

Q. Who told you that?

A. I don't remember who it was. There was a bunch of men standing there.

Q. That was at the entrance?

A. Yes, sir.

Q. Who was your fireman?

A. Mr. Baum.

Q. Mr. Baum was your fireman?

A. Yes, sir.

Q. And you saw your fireman standing there?

A. Yes, sir.

Mr. Simpson:

Judge, I'll quit. That's all.

Mr. Taylor:

That's all, Mr. Huckaby. That's all, you may be excused.

(Witness excused.)

The Court:

Gentlemen, don't talk to anybody about the case, and be back in the morning at 9:00 o'clock.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Friday, September 28, 1956.)

Friday, September 28, 1956,
9:00 A. M.

The Court:

All right, gentlemen, you may proceed.

DONALD E. MULLINS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you please state your name?

A. Donald Eugene Mullins.

Q. Where do you live?

A. At Roebuck Plaza, Birmingham.

Q. What do you do?

A. I am a clerk for the L&N Railroad.

Q. Are you employed as a clerk for the L&N Railroad now?

A. Yes, sir.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What organization are you a member of?

A. Brotherhood of Railway Clerks.

Q. Brotherhood of Railway Clerks?

A. Yes, sir.

Q. In October, of 1955, were you also employed by the L&N?

A. Yes, sir, I was.

Q. And you were a clerk at that time?

A. Yes, sir.

Q. Where was your place of duty?

A. At the General Yard Office, Boyles.

Q. At the General Yard Office at Boyles?

A. Yes, sir.

Q. Do you recall the work stoppage that occurred on Sunday, October 23?

A. Yes, sir, I do.

Q. Were you working that day?

A. Yes, sir.

Q. What shift were you working on?

A. Second shift, 3:00 to 11:00.

Q. What was the first indication that you had that the work stoppage was in progress?

A. When Assistant General Yard Master Porter came in and told the South Yard to shutdown.

Q. At about what time was that?

A. That was approximately 9:00 o'clock.

Q. Tell us what occurred after that, if anything?

A. Well, within a few minutes after he made that statement a few of the men started coming in the office out of the Yard. I would say most of the switchmen were, seemed to be checking the board, taking a last minute look at it before they left. Shortly after they started filing in one man came in and made a remark similar to "All right, let's go", or something to that effect.

Q. One man yelled out "All right, let's go"?

A. To the best of my memory.

Q. Do you know who that man was?

A. No, sir, I do not.

Q. Did he have anything in his hands that you saw?

A. No, sir, not that I noticed.

Q. Look around the Courtroom. Do you see the man in the Courtroom that made that remark?

A. Sir, I couldn't identify him if he is here. I don't know.

Q. You didn't see anyone, you don't see anyone in the room that you identify as being that man?

A. No, sir, I don't.

Q. At about what time was that remark made?

A. I would say five or ten minutes after 9:00.

Q. Five or ten minutes after 9:00?

A. Yes, sir.

Q. Was Mr. Duncan in the same office with you?

A. Yes, sir, he was.

Q. Where was Mr. Mitchell's office?

A. Mr. Mitchell's office is located upstairs, on the second floor.

Q. Upstairs, on the second floor?

A. Yes, sir.

Q. At that time do you recall whether Mr. Mitchell was in his office or downstairs?

A. He had been downstairs about all the time he had been out at the office that night, and I believe he was present in the office then.

Q. After this man called out "Let's go", what did you do?

A. Well, I went over to assist Chief Clerk Duncan to put a turnover in the book, prior to leaving.

Q. How long did that take?

A. Just a minute or two.

Q. A minute or two?

A. Yes, sir.

Q. Then what did you do?

A. Then Duncan and I walked out of the front door together.

Q. How many other clerks, or approximately how many other clerks were in the office there?

A. About eight employees inside of the office.

Q. Were any of them left in there when you left?

A. No, sir, we were the last two out.

Q. You were the last two out?

A. Yes, sir, so far as clerks were concerned.

Q. That is you and Duncan?

A. Yes, sir.

Q. Where was Mr. Mitchell?

A. Mr. Mitchell was still in the office.

Q. Did you see him come out of the office?

A. After we had gotten on the outside, yes, sir.

Q. After you had gotten on the outside?

A. Yes, sir.

Q. Mr. Mitchell was the last out, wasn't he?

A. Yes, sir.

Q. Where did you go then?

A. I went directly to the parking lot where I had my car.

Q. Did you leave the Company premises then?

A. Yes, sir, straight out.

Q. Where did you go?

A. Well, another clerk and I went to Tarrant City, to the Coffee Shop.

Q. You went to Tarrant City?

A. Yes, sir.

Q. Then the next day, did you return to the Boyles Yard at any time, or the vicinity of the Boyles Yard?

A. Yes, sir, I did, but I—

Q. What time was that?

A. About 2:30 in the afternoon.

Q. About 2:30 in the afternoon?

A. Yes, sir.

Q. And where did you go, what particular place did you go to?

A. Well, I went back up to the 39th Avenue entrance, at the parking lot.

Q. What did you see there?

A. Well, there was several people parked and congregated around outside of there, just general small groups in conversation, just standing around.

Q. Was there any work being carried on in the Yard that you observed?

A. No, sir, that is what I went up to see.

Q. Did you go into the Yard?

A. No, sir, I did not.

Q. Did anyone prevent you from going into the Yard?

Mr. Simpson:

We object to that.

A. No, sir, they didn't.

Mr. Simpson:

As a conclusion.

The Court:

I sustain the objection.

Q. Was there any barrier up there to keep you from going into the Yard?

A. No, sir, not as far as a gate being locked or any prominent pickets or anything like that.

Q. Did anyone tell you not to go in?

A. No, sir, it was more or less—

Q How long did you stay around there at that time?

A. I stayed around possibly until around 4:00 or 4:30 in the afternoon.

Q. While you were there, were other Railroad men in the vicinity?

A. Yes, sir, they were.

Q. And were all crafts, did you see some of all crafts there?

Mr. Simpson:

We object to that as leading.

The Court:

It is a leading question. I sustain the objection.

Mr. Pettus.

I don't know how to state it.

Q. Were they all one craft?

A. No, sir.

Q. Or more than one craft?

A. There were several crafts.

Q. Several crafts?

A. Yes, sir.

Q. At about 4:30 you left, you say, 4:00 or 4:30?

A. About that time, yes, sir.

Q. When was the next time you went back to the Boyles Yard?

A. The next afternoon, about the same time.

Q. About the same time?

A. Yes.

Q. Were you working on the 3:00 o'clock shift?

A. Yes, sir, regular.

Q. Did you go in on Tuesday afternoon?

A. If that was the day the first shift went back to work I did. I don't recall. I believe it was—

Q. Do you recall what day the work stoppage was over?

A. I believe it was over on Wednesday.

Q. On Wednesday?

A. The best I remember.

Q. Did you go back to work before the work stoppage was over?

A. No, sir, I didn't.

Q. You did not?

A. No, sir.

Q. Did you go down there each day during the work stoppage at about the same time?

A. Yes, sir.

Q. Each day that you went down there, did anyone tell you not to go into the Company premises?

A. No, sir, not anyone.

Q. Did anyone threaten to do anything to you down there?

A. No, sir, they didn't.

Q. You were not paid for the three days you were off, were you?

A. No, sir, I was not.

Q. When did you go back to work?

A. I was trying to remember my off day. I believe it was on Thursday.

Q. You think you went back to work on Thursday?

A. I believe it was, I'm not sure about that.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Mullins, counsel asked you if you were threatened by anybody. Did you attempt to go into your place of work either on Monday, Tuesday or Wednesday?

A. No, sir.

Q. Before the work stoppage was over?

A. No, sir, not during the strike.

Q. Not during the strike?

A. No, sir.

Q. You didn't attempt to pass in the gates, did you?

A. No, sir, I didn't.

Q. Nobody, of course, threatened you standing around Rex's or out in the road, did they?

A. Well, I was up at 39th Avenue.

Q. Oh, you were up at 39th Avenue?

A. Yes, sir.

Q. So nobody walked over where you were and threatened you?

A. No, sir.

Q. You saw men standing around the entrance there in a group?

A. Yes, sir.

Q. Whittling, with fires and so forth?

A. No fires, as I remember.

Q. No fires as you remember?

A. No, sir.

Q. Are you sure?

A. I don't believe there was.

Q. All right. You say that about 9:00 o'clock now one man walked into the office and hollered "Let's get out", or "Let's go", or something like that?

A. Yes, sir, that's approximately what he said.

Q. In other words, there were other men out there, around there at that time, weren't there?

A. Yes, sir, there were several.

Q. You didn't mean there was only just one man out there where that voice came from?

A. No, sir, there were several men.

Q. Several men?

A. Yes, sir. This was in the lobby.

Q. There was only one man that called out loud "Let's get out"?

A. Yes, sir, so far as I know.

Q. Or "Get out"?

A. Yes, sir.

Q. That was in a voice that you could hear all over that room, wasn't it?

A. Yes, sir.

Q. It was loud, wasn't it?

A. Yes, sir.

Q. Is that room as big as this room?

A. No, sir, the lobby is only about one-fourth the size of this room, approximately.

Q. I mean the space occupied by the rest of you, where you work, how big is that?

A. The main office is as large as this.

Q. The main office is or is not?

A. It is approximately as large as this.

Q. That's right?

A. Yes, sir.

Q. It was heard all over the main office?

A. Yes, sir.

Q. It was loud enough to have been heard if anybody had been up there, wasn't it?

A. I don't know about that.

Q. You don't know about that?

A. No, sir.

Q. Anyway, you heard it?

A. I heard it, yes, sir.

Q. It was loud, clear and distinct?

A. Yes, sir.

Q. You understood what he meant, didn't you?

A. Yes, sir.

Q. And you went right out, didn't you?

A. Yes, sir.

Q. Were you afraid to stay there and work after that order had been given?

Mr. Pettus:

We object to that, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. The question is would you have been afraid to stay there and work?

Mr. Pettus:
We renew our objection on the same ground.

The Court:
Not what he would have been.

Q. Well, were you afraid or scared at the time that order to get out of there came?

Mr. Pettus:
The same objection on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Do I answer the question?

The Court:
Yes, you have to answer the question.

A. Well, sir, I wasn't scared at the particular time. However, I wouldn't have stayed there.
Q. You wouldn't have stayed there?
A. No, sir.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Mr. Simpson:
That's all, Mr. Mullins. Thank you, sir.

Re-Direct Examination.

By Mr. Pettus:
Q. Mr. Mullins, the man that made this remark about "Let's go", was he standing inside of the room or where was he standing?
A. I believe he just came in the door of the lobby.
Q. Just came into the door of the lobby?
A. Just stepped in there.
Q. And called out?
A. Yes, sir.
Q. And the lights were on at that time?
A. Yes. sir, they were.

Mr. Pettus:
All right, that's all.

Mr. Simpson:
Let me ask you one more question, if the Court will permit me.

Re-Cross Examination.

By Mr. Simpson:

Q. You say you didn't see the man that came in there?

A. No, sir.

Q. You didn't recognize him and don't know the name of the man that came in and gave that order, do you?

A. No, sir.

Q. Now, you don't mean to say that that particular man is not in this Courtroom; you say you just don't recognize him?

A. I don't know who he was.

Q. Do you know who turned out the lights there in the Yard Office?

A. No, sir, I don't have any idea.

Q. Did they all go out about one time, cut them at the master switch, or how did they go out?

A. I don't know whether they were cut off or not.

Q. Did you see anybody going around turning out lights one by one there?

A. Not that I recall.

Q. You didn't see that?

A. No, sir.

Mr. Simpson:

That's all.

Mr. Pettus:

That's all.

The Court:

The witness is excused unless there is objection.

Mr. Simpson:
We have no objection.

Mr. Pettus:
You are excused, Mr. Mullins.

(Witness excused.)

The Court:
Call your next witness.

Mr. Taylor:
Mr. Baum.

H. M. BAUM, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:
Q. Is this Mr. H. M. Baum?
A. That's right.
Q. And you are an employee of the L&N Railroad, are you, Mr. Baum?
A. Yes, sir.
Q. And you were on October 23, 1955?
A. I was.
Q. During the time this work stoppage we are inquiring about occurred, is that correct?
A. I was
Q. And in what capacity were you employed at that time?
A. Locomotive fireman.

Q. Are you now a member of a Brotherhood?

A. Yes, sir.

Q. What is that, please?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Were you a member of that organization during this work stoppage?

A. I was.

Q. Did you receive any pay during the period covered by the work stoppage?

A. No, sir, I did not.

Q. Now, Mr. Baum, when did you first hear about the meeting that was held at Mr. Parker's home?

A. That was Sunday afternoon approximately, I would say about 2:30, maybe a little bit later. I just wouldn't say positively.

Q. Now, prior to hearing about that, had you received any notice or did you acquire any knowledge of the Railroad's intention to abolish the hostler helpers jobs?

A. Only the bulletin that I read about it.

Q. Where did you see that bulletin?

A. In the firemen and engineers washroom.

Q. Did you hear that bulletin discussed?

A. Yes. sir.

Q. Among other employees?

A. I heard that bulletin discussed, oh. several different times, out even in the Yard, by the switchmen and enginemen and the other crafts of the Union out there, and shop men.

Q. There was a very general discussion among the employees?

Mr. Simpson:

We object to that, leading and suggestive

The Court:
Sustained.

Q. Tell us if you will where and how you heard about the gathering at Mr. Parker's house.

A. Well, on Sunday I went to work from 7:00 to 3:00, and about 2:30 someone hollered at me, I don't recall who the man was, and asked me if I was going to Shorty Parker's meeting, and I told him I didn't know anything about a meeting, and he says "They are going to have one there at 4:30." I says "Well, I'll try to be up there."

Q. Before we get to the meeting itself, let me ask you this. Did you attend a Union meeting the Friday night preceding that Sunday that we are talking about?

A. No, sir.

Q. Did you attend a gathering on the street outside the hall after the meeting was over?

A. No, sir, I did not.

Q. You worked your regular shift Sunday, October 23, is that correct?

A. That's right.

Q. Now, what time did you go to Mr. Parker's home?

A. I got there right around about 4:30, something like that, 4:30 or 4:35, right close to there.

Q. Were there others there when you arrived?

A. Oh, yes.

Q. Were they inside or outside?

A. Well, some of them were outside, some were inside.

Q. Was there any person in charge of that meeting?

Mr. Simpson:

We object to that as a conclusion, may it please the Court.

The Court:

Sustained.

Q. Did anybody tell you what to do when you got there?

A. No, sir.

Q. Was there a presiding officer at that meeting?

A. There was no officer at that meeting.

Q. Was it a formally conducted meeting?

A. No.

Q. Did the person who spoke obtain recognition and speak by themselves, or was there general discussion going on?

A. Well, it was a general discussion.

Q. Among groups of people?

A. That's right.

Q. At the same time?

A. That's right.

Q. Now, Mr. Baum, without taking up the time and asking you to identify the people you saw there, you have heard testimony about that. Does your recollection coincide with the people you have heard being identified as being at the meeting?

A. Oh, yes, yes, sir.

Q. Now, if you will, Mr. Baum, explain to the Court and the gentlemen of the jury what you heard discussed at that meeting, and what you yourself said?

A. Well, I personally didn't have any statement to make myself, but the general discussion was as to the abolishing of the hostler helpers jobs, the outside

hostler helpers jobs, and what would be done in replacing them, or where we could get them back to work, and there was no one, so far as that goes, even took charge of the meeting.

Q. Do you recall any remark that you yourself made?

A. No, I do not.

Q. Did you ever discuss the whole group at any time while you were there?

A. No, I was sitting back by the garage door. I was just listening.

Q. Now, will you explain to the jury the duties of an outside hostler helper with regard to the responsibility for safety?

Mr. Simpson:
We object to that as being immaterial.

The Court:
Sustained.

Mr. Pettus:
We except.

Mr. Taylor:
All right, sir.

Q. About how long did the meeting last?
A. Approximately, about 30 minutes.
Q. How did you get to the meeting?
A. I drove my car.
Q. Did anybody accompany you?
A. No.
Q. And how did you leave the meeting?
A. I drove my car back.

Q. Now, at this meeting did you ask anybody, or make any statement to anyone directing them to prevent any L&N employee by force or threats of force from going to work?

A. I did not.

Q. Did anyone tell you or ask you to prevent any L&N employee from going to work by force or threats of force?

A. They did not.

Q. Did anyone tell you to intimidate any L&N employee?

A. No, sir.

Q. Did you tell anyone else to intimidate any L&N employee?

A. I did not.

Q. Did you hear any discussion in your presence or hearing, anything about that?

A. No, sir, I did not.

Q. Now was the meeting still in progress when you left, or did you leave with the group?

A. I left by myself.

Q. Where did you go when you left the meeting?

A. I went home.

Q. Now, do you have any judgment as to the time that you got home?

A. I would say about 5:15 or 5:20, something like that. I wouldn't say for sure what time I got there.

Q. Now, when were you next scheduled to go to work, your shift next scheduled to go to work, Mr. Baum?

A. At 7:00 a. m. Monday morning.

Q. Did you have any conversation with the roundhouse or the Engine Dispatcher on Sunday night?

A. No, sir, I did not.

Q. Was there anybody at your home when you got there Sunday night?

A. Yes, sir.

Q. That is besides your family?

A. Outside of the family, yes, sir.

Q. Who were those people?

A. Mr. and Mrs. Harmon Wright, neighbors, across the street, and my stepson and his wife.

Q. Was that a social call?

A. That's right.

Q. Now, how long did Mr. and Mrs. Wright stay there?

A. It was some time around 9:00 or after before they left.

Q. Were you there all the time they were there?

A. I was.

Q. Was your wife there?

A. She was.

Q. What did you do the remainder of Sunday night?

A. I stayed home.

Q. All right, sir, now Sunday night do you know whether or not there was a work stoppage on at the Boyles Yard?

A. I didn't know it until I reported for work at 7:00 a. m.

Q. When did you get down to the Boyles Yard on Monday morning?

A. I got there approximately at 6:30, the general time.

Q. You were then working the shift that commenced work at 7:00 o'clock, is that correct?

A. That's right.

Q. Is that the time ordinarily that you reported there for that shift?

A. That's right, about 6:30.

Q. Now, where did you go when you got to the Boyles Yard?

A. I went down to 39th Street, what they call the powerhouse gate.

Q. Tell the gentlemen of the jury and the Court what you saw, if anything, when you got down there.

A. Well, when I got down there about 6:30 that morning, there was a group of men standing around, and they said there was nothing working inside. So I stayed out there with them.

Q. Did you hear any activity in the Yard from where you were?

A. Not from where I was, no.

Q. If any activity was going on could you have observed it from where you were?

A. Sir?

Q. I say if any activity was going on, could you have heard it from where you were?

A. Well, I believe I could, yes.

Q. Who did you say that you recognized at that 39th Street entrance at that time?

A. Well there was a switchman, Jack Wall, Louie Wilkes.

Q. What occupation does Mr. Wilkes have?

A. He is a switchman.

Q. Anybody else?

A. George Britton, he's a switchman, and the engineer that I worked with.

Q. What is his name?

A. J. W. Huckaby.

Q. That is the gentleman, Mr. Huckaby, that testified here late yesterday afternoon?

A. That's right.

Q. All right. Did you have any conversation with Mr. Huckaby?

A. Yes, sir.

Q. What did you tell him and what did he tell you, if anything?

A. He come down there and asked what the trouble was, and I said "I understand there is labor trouble inside." So he says "Well, I'll stay around here a few minutes", and he left and went on home. He asked me if I was too, and I says "No, I'm going to stay around here a few minutes."

Q. How long did you stay there?

A. I stayed there until approximately about 2:30 or a quarter to 3:00.

Q. Was that the time your shift would have concluded had it worked that day?

A. That's right.

Q. Did anyone tell you to come to that gate at 6:30 on Monday morning?

A. There ain't nobody told me to come there.

Q. Did anybody tell you how long to stay there?

A. No.

Q. Did anybody tell you when to leave?

A. No.

Q. All right, sir. Where did you go when you left there on Monday afternoon?

A. I went home.

Q. Approximately what time did you arrive there?

A. Oh, I would say—well, I left there about a quarter to 3:00. It takes about 15 minutes to go home, maybe a little longer.

Q. And did you leave home that evening?

A. Yes, sir, I did.

Q. Where did you go?

A. I went to pick up my wife at Buckeye.

Q. I will ask you was she working downtown?

A. She was working at Buckeye.

Q. That is Western Grain, or Buckeye Feed & Grain?

A. Yes, sir, that's right.

Q. Or whatever the name is?

A. Yes, sir.

Q. Where did you go after you picked her up?

A. We went to Britling and ate supper.

Q. Where did you go then?

A. We went to the Alabama, to the show.

Q. Did you return to your home after that?

A. I did.

Q. Did you remain at home all evening?

A. I did.

Q. All right. Would your shift have gone to work Tuesday morning at 7:00 o'clock if it had worked?

A. It would.

Q. Where did you go, if anywhere, on Tuesday morning?

A. I reported back at 6:30 to the main powerhouse gate again.

Q. Did anybody tell you to go down there at that time?

A. No, sir.

Q. What did you see when you got down there at that time?

A. There was still a group of men hanging around there.

Q. Did you see or hear any activity in the Yard?

A. I did not.

Q. Do you recall any of the people you saw down there on Tuesday?

A. Yes, the same crowd was down there on Tuesday as there was on Monday, maybe a little larger.

Q. Did you see anybody threatened while you were there?

A. No, sir, I did not.

Q. Did you see anybody physically struck?

A. No, sir.

Q. Did you see anybody restrained from entering the premises?

A. No, sir, I did not.

Q. Did you yourself threaten anybody?

A. I did not.

Q. Did you yourself use any physical force against any person there?

A. I did not.

Q. How long did you stay there on Tuesday?

A. I imagine about a quarter to 3:00, something like that.

Q. And where did you go when you left?

A. I went home.

Q. What did you do that evening, did you stay at home?

A. No, I went to pick up my wife at Buckeye's, had supper, and then went bowling at L-Mac Bowling Alley.

Q. Who did you go bowling with?

A. If I am not mistaken, Jerry O'Conner, let's see, Jerry O'Conner, Jimmy Snyder, and myself, and Clarence Flege and Hiram Welsh. We all bowl together on a regular league bowling team.

Q. Are you on a bowling team?

A. That's right, I am on a regular bowling team.

Q. Was that the regular meeting night for your team to bowl?

A. That's right.

Q. What time did you leave the bowling alley?

A. Approximately 11:05 or 11:10, something like that.

Q. Where did you go then?

A. I went back home.

Q. Did you spend the remainder of that night at home?

A. I did.

Q. All right. If you left your home Wednesday morning, where did you go?

A. I went back down there, reported regularly at 6:30.

Q. Had anybody told you to go back down there at 6:30?

A. No, sir.

Q. What did you see on Wednesday morning when you got down there?

A. I saw the same Wednesday morning as I saw Monday and Tuesday.

Q. How long did you stay down there?

A. About a quarter to 3:00, something like that.

Q. Where did you go when you left Wednesday?

A. I went back home.

Q. Did you stay at your home on Wednesday evening?

A. I did not.

Q. Where did you go, sir?

A. To pick up the wife, and we had supper, and I went bowling on another league bowling team, Stovall Electric Company. I bowled on their league team on Wednesday night.

Q. How long did you bowl on Wednesday night? What time did you leave the bowling alley?

A It was after 11:00.

Q. While you were at the bowling alley, up to the time you left, did you know whether or not the work stoppage had been concluded?

A. I did not.

Q. When did you next go to work after the work stoppage was over?

A. Mr. Taylor in my—I remember in my deposition I did make a statement I went, I thought it was on Friday, but they called me Thursday morning about 5:00 o'clock to report for 7:00.

Q. Your best judgment is that you received a call Thursday morning?

A. That's right.

Q. And whom did you receive that call from?

A. The Engine Dispatcher.

Q. Is that the only time you were contacted by the Engine Dispatcher from Sunday night until that time?

A. That's right.

Q. Now you had not laid off, had you, Mr. Baum?

A. No, sir, I hadn't.

Q. No official of the Railroad had tried to contact you, had they?

Mr. Simpson:
We object.

Q. As to work being available?

Mr. Simpson:
We object to what somebody tried to do.

The Court:
Sustained.

Q. Well, did any Railroad official contact you until Thursday morning, Mr. Baum, at 5:00 o'clock?

A. There is no one contacted me only the telephone call from the Engine Dispatcher, Mr. Jordan, asking me to report for work at 7:00 o'clock.

Q. And did you report for work at 7:00 o'clock?

A. I did.

Q. Now, Mr. Baum, you have heard some testimony here by Mr. Ben Mitchell to the effect that you and Tommy Davis and a man named Myrick came in the Yard Office on Sunday night and told the people in there to leave. Were you in the Yard Office of the L&N Railroad at Boyles Yard on Sunday night, October 23?

A. I was nowheres near or around the Boyles Yard Office Sunday night.

Q. On Sunday night did you tell anybody to get out of the Yard, or get out of anywhere else on the L&N premises?

A. No, sir, I was not even around there. I couldn't tell nobody that.

Q. Now, Mr. Baum, during the course of this three day work stoppage, did you order anybody not to work at the L&N Yard?

A. I did not.

Q. Did you threaten anybody?

A. I did not.

Q. That wanted to work?

A. No, sir, I did not.

Q. Did you instruct any other person to use force or threats of force to prevent any other person from working for the L&N?

A. I did not make no threats.

Q. During this three day work stoppage did you see or hear any person threatened to keep him from going to work?

A. No, sir, I did not.

Q. Did you see any person physically restrained from going to work?

A. No, sir.

Mr. Taylor:

That's all, Mr. Baum. Now, answer Mr. Simpson's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Baum, I believe you say that you didn't see anybody physically restrained or stopped from entering the Yard during this three day stoppage that the strike was on, is that right?

A. That is right.

Q. Did you see anybody enter the Yard during those three days?

A. Yes, there were some switchmen that went in there. I don't know what they went for.

Q. They went in there with Mr. Chapman, a fireman, to see that there was nobody in there early Monday morning, didn't they?

A. Now, I couldn't tell you whether he was with them or not, I don't know.

Q. You saw that crowd go in to see that there was nobody in the Yard?

A. There was some men went in there, but I couldn't—

Q. What time Monday morning did they go in?

A. My good gracious, I just—to be honest with you I couldn't tell you what time they went in.

Q. Well, what time did you get there Monday morning?

A. I got there about 6:30.

Q. Was it after you got there?

A. Oh, yes.

Q. About how many men were in that crowd that went in there?

A. Oh, I think, as near as I can recollect, I don't think there was over—I know there wasn't over six or seven, I don't think, that went in there, that I know of.

Q. Did you see the whole gang or whole crowd?

A. I didn't pay any attention to who went in there myself, to be honest with you.

Q. Do you know how long they stayed in, or did they come out at the same entrance they went in?

A. They come out at the same place they went in.

Q. Did they report there was anybody in there?

A. I didn't hear them say whether there was anybody in there or not.

Q. You didn't hear them report at all?

A. No.

Q. Now aside from those, did you see anybody go in?

A. No, sir.

Q. You did not?

A. I did not.

Q. Not a soul during the time you were there?

A. No, sir.

Q. And you were there from 7:00 o'clock until 3:00 on three days?

A. About a quarter to 3:00, something like that.

Q. From about 7:00 to 3:00?

A. Yes.

Q. And at the same gate?

A. That's right.

Q. Did you tell this jury that you did not agree with anybody to stand watch or stay at that gate from 7:00 until 3:00 on those days?

A. My assignment went to work at 7:00 a. m., and I reported to that gate.

Q. I realize that you told us that.

A. That's right.

Q. But I asked you if you agreed with anybody that you would stay there at that gate, stand around that entrance from 7:00 until 3:00 on those days that the strike was in effect?

A. No, sir, I did not.

Q. You deny that?

A. No, sir; I deny that.

Q. Do you know Mr. Louie Wilkes?

A. I do.

Q. You saw him when your attorney put him on the stand and examined him here?

A. Yes, sir.

Q. The other day?

A. Yes, sir.

Q. How long have you known Mr. Wilkes?

A. Well, let's see, I have been with the L&N right around a little over 11 years, and I have known Louie Wilkes, oh, approximately about 5 years, something like that, that is personally acquainted with him.

Q. You referred to him as a switchman. As a matter of fact, he is a promoted switchman, isn't he, isn't he a conductor?

A. Sometimes he is a switchman, sometimes a con ductor, sometimes he helps. He is, one day he might go out there—if you will permit me to say this I will explain that to you. Is it all right, to explain to him what I mean by that, switchman and foreman?

Mr. Simpson:

I don't think it is objectionable. I am not insisting that he explain unless his counsel wants him to.

The Court:

All right, proceed with your question.

Q. You don't need to bother to explain it if you don't want to. You say he was either a switchman or a conductor?

A. Yes, sir, that's the way we call that, a switchman.

Q. I am just trying to identify him. Do you recall hearing him testify here?

A. I do.

Q. I will ask you whether or not while you were standing out there at that entrance on Monday, the 24th, Mr. Louie Wilkes walked up to you and asked you if it would be all right for him to go in the Yard?

A. Mr. Wilkes didn't walk up to me. Mr. Wilkes called me over there where he and some men were discussing it.

Q. I just asked you the question, did Mr. Wilkes ask you if it would be all right for him to go in the Yard.

A. Yes.

Q. What did you say to Mr. Wilkes?

A. I told him I wasn't no picket, and I didn't have no authority to stop him.

Q. You deny that you were a picket?

A. That's right.

Q. And after Mr. Wilkes asked your permission, he did actually go in the Yard, didn't he?

A. Now, that I couldn't swear to.

Q. You couldn't swear to that one way or the other?

A. I couldn't swear to that, because I don't know.

Q. Did Mr. Wilkes explain to you why he asked you over there, called you over there to ask you for permission to go into the Yard?

A. He did.

Q. Why did he say?

A. He said his Local Chairman had sent word that they was to go in the Yard Office and stay a certain length of time, and if no work was available, they was to turn in a time slip for the time they had been in, and return out.

Q. Now, that was his explanation about why he wanted to go in?

A. Yes.

Q. We understood that, he told us that.

A. He told me that too.

Q. What?

A. He told me that out there too.

Q. That's right, there's no question about that.

A. Yes.

Q. Did he tell you why he selected you as being the one of whom he would ask permission to go in?

Mr. Pettus:
We object to that, as to why.

The Court:
Overruled.

Mr. Pettus:
We except.

A. That I couldn't say.

Q. Didn't he say he understood that was a firemen's strike?

A. He didn't say anything about a firemen's strike, he just said he understood there was a work stoppage in there. I didn't know anything about a firemen's strike.

Q. Well, you heard Mr. Wilkes testify?

A. I did hear him testify.

Q. Now, aside from the group of switchmen that went through the Yard for a clean up early Monday morning—

Mr. Taylor:

If the Court please, just a minute, we object. There has been no testimony from this witness that they went through there for a clean up. He couldn't possibly testify as to the intention of the group.

Mr. Simpson:

I didn't say anything about what this witness testified.

The Court:

Overruled, until he finishes his question.

Q. Aside from that group of switchmen that went through that Yard early Monday morning, and Mr. Wilkes, did you see anybody else go in, enter the premises of the L&N Railroad through either of those gates where you were present?

A. I was only present at one gate.

Q. During those three days?

A. I couldn't vouch for the other gate. I don't know.

Q. Your answer is you didn't see anybody else go into the gate where you were?

A. No, sir.

Q. You were not at any other gate?

A. No.

Q. Well, now, would you have considered it dangerous to go in there, Mr. Baum?

Mr. Taylor:
We object to that.

Q. Were you scared to go in?

The Court:
Sustained.

Q. To go in there yourself?

Mr. Taylor:
We object.

The Court:
Overruled.

Mr. Taylor:
We except.

A. I think I said in my deposition that there were about 30 or 40 men standing around there. It really was not safe.

Q. That's exactly the point I wanted to make. There were 30 or 40 men standing around there, some whittling, some of them not whittling, around that entrance, and under those circumstances you would not have considered it safe to enter that gate, would you?

A. I didn't say anything about men being around there whittling.

Q. Well, let's leave the whittling out.

A. All right.

Q. With those 30 or 40 men standing around that gate, you would not have considered it safe to go in there, would you?

Mr. Taylor:
We object to that.

A. I was in that 58 day strike.

The Court:
Overruled.

Q. That's the point, you had seen people try to do that, hadn't you?

A. Not only there, but other places too.

Q. You had seen what happened to people who tried to go in that gate?

Mr. Taylor:
Just a minute.

Mr. Simpson:
He brought it up, if the Court please.

Mr. Taylor:
We move to exclude his volunteer statement, and object to the question.

Mr. Simpson:
I don't see how he could exclude his own witness's statement, Your Honor.

The Court:
Overruled.

Q. Now, you based that on what you had seen happen in the 58 day strike, among other things, didn't you?

Mr. Taylor:
Just a minute. We object to that.

A. I didn't say I was scared to go in, Mr. Simpson.

The Court:
I didn't get that question exactly.

(The question was read.)

The Court:
Sustained.

Mr. Simpson:
We except.

Q. What did you mean by you had been through the 58 day strike, Mr. Baum?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

A. I wouldn't like to answer that.

The Court:
Overruled.

A. What did I mean by the 58 day strike?
Q. What do you mean, you had seen the 58 day strike?
A. I was an authorized picket in the 58 day strike at 30th Street.
Q. What had you seen then that made you think it was dangerous, going in this time?

Mr. Pettus:
We object.

Q. With 40 or 50 men standing around?

The Court:
You mean you are referring to this particular work stoppage, rather than the 58 day strike?

Mr. Simpson:
No, sir, I—

The Court:
I sustain the objection if you refer to the condition in the 58 day strike.

Mr. Simpson:
I know the Court has been,—has kept that out of it, and I would not have attempted, and certainly don't intend under the Court's instructions to bring it in, but this gentleman brought up what he had seen in the 58 day strike.

The Court:
I sustain the objection.

Mr. Simpson:
Does the Court rule that I should not pursue that line of questioning?

The Court:
Yes, I think if we get into the other strike—

Mr. Simpson:
All right. We except.

Q. Now, Mr. Baum, you were asked this question and made this answer, didn't you, with respect to that?

Mr. Pettus:
What page is that on?

Mr. Simpson:
Well, he said it several times, 54, 55, and 56 are the places I am looking at right now. On 55, I think that is probably as good as any of them.

Mr. Taylor:
55?

Mr. Simpson:
Yes, down about two-thirds of the way down, Mr. Taylor.

Mr. Simpson: (Reading)
"Q. When you got down there on Tuesday morning, state whether or not you were afraid to enter the gate?

"A. I stated it once before.

"Q. State it again.

"A. I didn't think it safe to go in there under conditions of labor trouble."

Mr. Taylor:

We object to the mental condition of the witness.

The Court:

Overruled.

Q. Did you make those statements, were those questions asked you and were those answers made by you on your examination in November, on November 21, 1955?

A. I think I stated that just now.

Q. Yes, sir, all right. Well, I won't ask you about any of the others.

Now, you say that at Mr. Parker's house that Sunday afternoon you have nobody to add to the list that was there?

A. No, sir.

Q. If the Court would permit me I would like to read the list of people were that have been mentioned, and ask you if those were present. Mr. Howard Anderson?

A. That's right.

Q. Mr. Bruce Barnett?

A. Right.

Q. Mr. Baum?

A. Right.

Q. Yourself?

A. That's me.

Q. Mr. J. M. Brown, Jr.?

A. Right.

Q. Mr. Grissom?
A. Right.
Q. Mr. M. L Hall?
A. Right.
Q. Mr. Letchman?
A. Yes, sir.
Q. Mr. McCutcheon?
A. Right.
Q. Mr. Otts?
A. Yes
Q. Mr. Parker?
A. Right.
Q. The host?
A. Yes.
Q. Mr. Howard Southerland?
A. Right.
Q. Mr. Sutterlin?
A. Right.
Q. Mr. Reese Thomas?
A. Right.
Q. Mr. A. R. Thomas?
A. Yes, sir.
Q. Mr. J. M. Weldon?
A. Right.
Q. Mr. Kennedy?
A. That's right.
Q. Mr. Edwards, Fred Edwards?
A. Right.
Q. Mr. Fleming?
A. Right.
Q. Mr. Stuart?
A. Right.
Q. Mr. Logan?
A. Right.
Q. And Mr. Vann?

A. That's right.

Q. Now, was there anybody else that I haven't mentioned?

A. I think that's enough. No, I don't.

Q. Now, Mr. Baum, who was the Local Chairman of the Firemen on your Division at that time?

A. Well, at our regular meetings, and for attending to business, Mr. J. B. Otts.

Q. He was Local Chairman?

A. Yes.

Q. Who was President of the Local?

A. By-golly, I can't tell you, I haven't been to a meeting in so long I don't know.

Q. Wasn't J. M. Brown President at that time?

A. He may have been. I don't know, I haven't been to a meeting in so long, I don't know.

Q. You did not mean that there wasn't any officer of the Local present at Mr. Parker's. Both of those gentlemen were there, weren't they?

A. Mr. Simpson, I understood him to ask me whether there was a presiding officer at that thing. And that's the reason I stated "No." I was under the impression he meant at that meeting, whether there was somebody presiding at the meeting as an officer. But our Local Chairman and Jim Brown were there.

Q. Both our President and Local Chairman were there at the meeting?

A. That's right, they were there at the meeting.

Q. You were not a regular attendant at the Union meetings then?

A. On the shift I was working, no, sir, I couldn't be, because I was more or less working the Extra Board, called out at all times, and when they would have the meetings I would probably be at work.

Q. You usually worked on the first shift, didn't you?

A. Well, if I took a regular assignment.

Q. And the meetings were usually held at night, weren't they?

A. No.

Q. The first shift went off—

A. No.

Q. The first shift went off at 3:00, didn't they?

A. No, they usually were not held at night, some were held during the day.

Q. What?

A. Some were held during the day.

Q. Most of them were held during the evening, weren't they?

A. No, the same amount in the day, I think there was one meeting on day, and one on night.

Q. Anyway you have not been going to the meetings very often?

A. No, sir.

Q. You did go to this meeting?

A. Which meeting are you referring to?

Q. The one at Mr. Parker's house?

A. I did, I was asked to go there.

Q. The one that was called to see about getting those jobs restored?

A. I couldn't tell you what the meeting was before it happened.

Q. Did you hear Mr. Kennedy make any statement at that meeting that Sunday afternoon?

A. Let me see, I don't know whether I did or not, it has been so long ago.

Mr. Taylor:

Speak up, Mr. Baum.

A. I just don't remember whether he made a statement or not, that has been so long ago, I just don't remember.

Q. You didn't hear Mr. Kennedy get up and say he had just talked to Mr. Jake Paschal, the General Chairman of your Union, and Mr. Paschal told him it would be an illegal or wildcat strike, and not to strike?

A. From where I was sitting to where Mr. Kennedy was, he probably could have said something, I don't know. I didn't hear him say anything.

Q. Did you hear Mr. Sutterlin make any statement?

A. No.

Q. Did you hear Mr. Sutterlin express the same opinion that Mr. Kennedy did?

A. No.

Q. Did you hear Mr. J. M. Weldon say anything at that meeting?

A. No, there was just a general discussion among all the men. That's all I can tell you.

Q. I know, but I will ask you did you hear Mr. J. M. Weldon say that he had a baseball bat, and he wanted to be on the bat detail?

A. No, I didn't hear him say that, no, sir.

Q. You didn't hear Mr. Weldon say that?

A. No, sir, I didn't.

Q. Did you hear anybody else speak up and say that?

A. No, sir, I did not.

Q. There in that open meeting in Mr. Parker's garage on that Sunday afternoon?

A. No, sir, because I was sitting at least, well, from where the door was to where all of the men, were probably congregated around, talking, and where

I was, oh, about 10 or 12 or maybe 15 feet. I was sitting opposite the door, by the door in a chair.

Q. You say you were off to one side, and therefore you won't say that that statement wasn't made by Mr. Weldon?

A. Now if it was made, Mr. Simpson, I didn't hear it.

Q. All you say is that you didn't hear it?

A. That's right.

Q. You say you didn't hear Mr. Weldon say it, and you didn't hear anybody else make that statement?

A. That's right. I didn't hear no such statement.

Q. All right. Now, you say you were at one gate only during that entire three day strike?

A. That's correct.

Q. That's the one they have been calling here, you have been sitting here hearing all of the testimony?

A. That's right, I have heard it all.

Q. That's the one most of the witnesses referred to as the powerhouse gate?

A. Right.

Q. At 39th Street?

A. Right.

Q. How far is it from there up to Rex's Barbecue stand, just approximately?

A. Well, in a straight line I would say about four city blocks, maybe a little longer.

Q. Four city blocks?

A. I would say that, about that.

Q. What do you call the entrance opposite Rex's Barbecue stand?

A. Well, I didn't know they had any name for it particularly; it is a footbridge right across from Rex's.

Q. It goes into the call office and the roundhouse, doesn't it?

A. That's right.

Q. All right. Then the next one, further up the Pinson Pike, is another entrance which you call the Master Mechanic's entrance? Is that the way you line them up?

A. No. That one over there at that place, that you refer to, I think the one you are referring to is further north, is that right?

Q. Yes, sir.

A. That is the bridge that goes into the roundhouse, kind of like a parking lot.

Q. Is the Master Mechanic's entrance between the roundhouse entrance and the Rex's Barbecue?

A. Oh my, no.

Q. Where is the Mechanic's entrance?

A. The Master Mechanic's gate is, it is south of there.

Q. South of the powerhouse gate?

A. Yes, I would say three-quarters of a mile, maybe.

Q. South of the powerhouse gate?

A. No, this Rex's Barbecue you are talking about.

Q. I am not making myself clear to you. Let's forget that, I don't think it is important. Were you at the Master Mechanic's gate any time during this strike?

A. No, sir, I was not.

Q. You were never there under any circumstances?

A. No, sir.

Q. Were you present there when Mr. Mitchell and Mr. Woelde came up and went into the property there to see about whether they could find some bills of perishables or livestock?

A. I didn't see Mr. Mitchell or Mr. Woelde at any time.

Q. You tell us that you were not present when Mr. Mitchell—

A. That's right, I didn't see them at any time.

Q. —or Mr. Woelde came up and had the discussion with Reese Thomas about going into the property?

A. I can't vouch for what went on at other gates.

Q. I understand, but you say you didn't see or hear that?

A. That's right.

Q. Now then, I will ask you whether or not you saw Mr. Houts at any time during that strike, Engineer Houts?

A. I don't believe I did.

Q. You heard him testify here, didn't you?

A. I did.

Q. Do you remember what he said, where he said he saw you?

A. Oh, yes, I remember him.

Q. Now, where did he say he saw you?

A. He said he saw me in the Yard Office.

Q. At what time?

A. I should judge right around about 9:00 o'clock, is what he said.

Q. 9:00 o'clock Sunday night, wasn't it?

A. Yes, that's what he said.

Q. How long have you known Mr. Houts, the engineer?

A. Too long.

Q. Too long?

A. Yes, sir.

Q. You don't mean that you—you don't mean by any means to threaten him, do you?

A. I don't mean to threaten nobody, but I don't like a man that lies on me.

Q. And you say Mr. Houts lied when he said he saw you in the Yard Office Sunday night?

A. I'll tell him to his face he did.

Q. I am sure you will. Now then, do you know Mr. Sexton?

A. Yes.

Q. You heard what Mr. Sexton said you said to him, didn't you?

A. Yes, I heard it.

Q. What about Mr. Sexton, is he a liar too?

A. If you call him in and set him right down there I'll tell him what he was.

Q. Yes, you were telling a good many other people around that strike, during those three days, what they were, and what you were going to do to them, didn't you?

A. I ain't said nothing like that.

Q. You tell this jury all was sweetness and light out there so far as you were concerned?

A. So far as I was concerned, yes.

Q. While you stood there in front of that gate for 8 hours on those three days, that everything was lovely, and you were not threatening anybody, or you wouldn't have threatened anybody if they attempted to go in?

A. I didn't stop nobody, and I didn't tell nobody not to go in.

Q. All right. I will ask you whether or not you asked and urged Mr. Sexton to do picket duty at the gate Sunday night, that very night?

A. I never talked to Mr. Sexton.

Q. You didn't have a word to say to Mr. Sexton one way or the other?

A. I did not.

Q. You know Mr. Hobson too, don't you?

A. Oh, yes, sir.
Q. Is he another one of those?
A. (No response.)
Q. He is an engineer I believe?
A. (No response.)

Mr. Simpson:
That's all. I don't believe I want to ask you anything further, Mr. Baum. Thank you very much.

The Witness:
Thank you very much.

The Court:
All right, come down, Mr. Baum.

(Witness excused.)

Mr. Pettus:
Mr. Sutterlin, come around, please, sir.

R. A. SUTTERLIN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. R. A. Sutterlin.
Q. Where do you live?
A. Mount Olive.
Q. What do you do?
A. Locomotive fireman for the L&N Railroad.

Q. Were you a locomotive fireman in October, 1955 for the L&N?

A. Yes, sir.

Q. And what labor organization, if any, were you a member of in October, 1955?

A. Engineers.

Q. That is the Brotherhood of—

A. B of LF&E, Locomotive Engineers.

Q. Brotherhood of Locomotive Engineers?

A. B or LF&E.

Q. That is a different organization from the Brotherhood of Locomotive Fireman, isn't it?

A. Yes, sir.

Q. Who was your Local Chariman in October, 1955?

A. Mr. J. C. Laney.

Q. Mr. J. C. Laney?

A. I believe that is his initials.

Q. Now, did you attend this meeting at Mr. Parker's house on Sunday, October 23?

A. Yes, sir.

Q. Who, if anybody, invited you to the meeting?

A. Well, there was two that invited me.

Q. Who was that?

A. Mr. McCutcheon and Mr. Thomas.

Q. Where were you when they invited you?

A. Well, they was on the engine, and they was bringing the engine to another job that worked by the side of me.

Q. What day did that occur on?

A. Saturday morning, before the strike Sunday—I mean walkout Sunday.

Q. That was the Saturday morning before the Sunday that the walkout occurred?

A. Yes, sir.

Q. What did they say in that conversation to you? What did Mr. McCutcheon say, and what did Mr. Thomas say?

A. Well, I don't remember which one was first. Mr. Thomas called me over on the engine.

Q. Called you over on his engine?

A. Called me over on his engine that he was bringing to the job on the other side of me, to work by the side of me. And I went over there, and one of them told me that the firemen was holding a meeting at Mr. Parker's house Sunday at 4:30, and wanted me to be there. And I told them that I didn't belong to the Firemen's Organization. But they insisted I be there anyhow, because I was a fireman at that time.

Q. Did you go to the meeting?

A. Yes, sir.

Q. And was there anyone there that was not a fireman?

A. Yes, sir.

Q. That you saw?

A. Yes, sir, there was two fellows, but I didn't know who they were.

Q. They were not firemen, but they were at the meeting?

A. Yes, sir.

Q. About how many men were there at the meeting?

A. Well, I don't know, I don't remember.

Q. Did you go to the meeting by yourself, Mr. Sutterlin?

A. Yes, sir.

Q. Or did you go with someone?

A. I went by myself.

Q. Did you go in your own car?

A. Yes, sir.

Q. What was the subject discussed at the meeting?

A. Well, I understood the subject was to try to see about the abolition of these hostler helpers jobs.

Q. Is that the subject that you heard some discussion about at the meeting?

A. That was the purpose of the meeting.

Q. Well, was that subject discussed at the meeting? In other words, did somebody say something about that at the meeting?

A. Well, I don't remember, it come up in a roundabout way, but I don't remember how it did come up.

Q. Do you recall anything that anybody said at the meeting with regard to the hostler helpers jobs, any particular individual?

A. Some things, some things I remember. There was so many talking that I couldn't catch it, you know, just a word every now and then.

Q. Everybody was sort of talking at once at the meeting?

A. Well, there was several different crowds, but there was a big crowd in the middle of the floor, you know, everybody was talking, and I couldn't understand what they was all saying.

Q. Which crowd were you in?

A. I was kind of off to one side, by an icebox there.

Q. You were standing off to one side?

A. Yes, sir, and Mr. Kennedy and Mr. Baum was by the side of me there at the beginning of the meeting; not by the side of me, but on the other side of the icebox.

Q. You all were sort of standing off to one side, is that right?

A. Yes, sir.

Q. Did you say anything at the meeting that you recall?

A. Yes, sir.

Q. What did you say?

A. Well—

Q. Mr. Sutterlin, was this addressed to the whole meeting, or just these two or three men that were just around you there?

A. Well, it was—

Q. Mr. Kennedy?

A. You mean what I said?

Q. Yes, sir.

A. Well, I tried to address it to the whole meeting, but they wouldn't anybody say anything, or back me up in it.

Q. Were they all talking then when you addressed them?

A. There was several talking.

Q. What did you say to the meeting?

A. Well, I told them that they was getting the cart before the horse?

Q. You told them they were getting the cart before the horse?

A. Yes, sir.

Q. Did anybody make any reply to that?

A. Well, Mr. Kennedy—no, I don't believe they did.

Q. You don't believe anybody said anything to that?

A. No, sir.

Q. Did Mr. Kennedy say anything?

A. I beg your pardon?

Q. Mr. Kennedy, did he say anything?

A. Yes, sir.

Q. What did he say, if you recall?

A. Well, he said he talked to Mr. Paschal just a few minutes before this, and Mr. Paschal advised him to come to the meeting and explain to them that they couldn't, the organization couldn't back them up, because it was an outlaw strike, and that they would handle it through the upper channels, you know, proper channels.

Q. Had anybody said that it was being handled through other channels at that time?

A. Well, I don't know. Mr. Otts made the statement that he had talked to some of the officials.

Q. Mr. Otts did?

A. Yes, sir.

Q. Some of the officials of the Company?

A. Yes, sir.

Q. Or the Union?

A. For the Company.

Q. All right.

A. And I believe he said the Union. I am not positive now, because I asked him if he had talked to the Master Mechanic or any of the officials.

Q. What was his reply to that, if you recall?

A. He said that he had talked to—the Master Mechanic I believe was Mr. Quiggins at that time, and that he wasn't going over his head.

Q. He wasn't going over his head?

A. Yes, sir.

Q. Over Quiggins head?

A. Yes, that's right.

Q. Is that what you mean?

A. Yes, sir, that it was up to Mr. Quiggins.

Q. What was it that Mr. Otts had talked to him about?

A. About the abolition of these hostler helpers jobs.

Q. About the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. Now, after Mr. Kennedy made his statement was there any discussion following that?

A. Well, I don't remember right now.

Q. Do you recall anything that anybody else said at that time?

A. Well, there was so much said I couldn't remember it all.

Q. You couldn't remember it?

A. And it has been so long too.

Q. Now, Mr. Sutterlin, did Mr. Kennedy leave, or do you recall what time he left the meeting?

A. They took up about 4:30 and he left about 5:00 or 5:15, approximately.

Q. Approximately that?

A. I would say about 5:15.

Q. Were you still there when Mr. Kennedy left?

A. I left behind him.

Q. You left right behind him?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, there was three men went out the door, and I left behind them.

Q. You left behind them?

A. Yes, sir.

Q. The others were still at the meeting when you left?

A. Yes, sir.

Q. Where did you go when you left that meeting?

A. I went straight home.

Q. You went straight home?

A. Yes, sir.

Q. Did you stay at home that night?

A. Yes, sir.

Q. When was the last time you had worked before the meeting?

A. On Saturday, Saturday night, from 11:00 o'clock to 7:00 a. m. Sunday morning.

Q. You had gotten off at 7:00 o'clock that Sunday morning?

A. Yes, sir.

Q. Did you lay off after the meeting, or did you have a job, or what did you do about that?

A. I laid off that afternoon.

Q. You laid off that afternoon?

A. Yes, sir, about 6:00 or 6:15.

Q. You laid off?

A. Yes, sir.

Q. Did you assign any ground when you laid off?

A. I beg your pardon?

Q. Did you assign any reason when you laid off, to the man that you laid off to?

A. Well, I had a catch in my hip, and my left leg, and I called Mr. Jordan and told him to put me on the off board. He said "You're sick like the rest of them, are you?" And I said "Yes, sir, I guess so."

Q. You really were sick, weren't you?

A. Yes, sir.

Q. All right.

A. I had a catch in my hip. I wasn't sick, but I hadn't had any sleep, and I felt bad.

Q. Mr. Sutterlin, did you go back to the Company property the next day?

A. No, sir.

Q. What did you do Monday, if you recall?

A. Well, I stayed around the house, a little while, when I woke up. And I went to—I don't remember whether I went to the store or not, but I made a trip to Gardendale.

Q. And Tuesday did you go anywhere?
A. No, sir.
Q. You didn't go anywhere?
A. I might have went to the—you know, gone to the store.
Q. Just a short trip?
A. Or the post office, about a mile from the house.
Q. On Wednesday did you go anywhere?
A. Not Wednesday, but I did Wednesday afternoon.
Q. Wednesday afternoon?
A. Yes, sir.
Q. Where did you go Wednesday afternoon?
A. Over to the shop.
Q. Over to the shop?
A. Yes, sir.
Q. What time did you arrive there?
A. I believe it was about 7:30 or 8:00 o'clock.
Q. 7:30 or 8:00 o'clock?
A. As well as I remember now, yes, sir.
Q. Was Wednedsay the night they went back to work?
A. Yes, sir.
Q. And you arrived about when, that time was about 7:30 or 8:00, you say?
A. Somewhere in that neighborhood, between 7:30 and 8:00.
Q. Where did you go, or what point did you arrive at there?
A. The automobile entrance to the roundhouse.
Q. They call these gates by various names. Is that the one—
A. Coming from Tarrant City that is the first entrance.
Q. The first entrance?
A. Yes, sir.

Q. You call it the roundhouse entrance?

A. Yes, sir.

Q. I see.

A. There is a bridge there for cars to go in.

Q. What is the next one?

A. And the next one is Rex's.

Q. The Rex's?

A. What they call Rex's.

Q. Did you see anybody when you arrived there?

A. Yes, sir, I saw a few people, but I didn't know any of them.

Q. You didn't know any of them?

A. I have seen their faces, just like all these other gentlemen here, I have seen their faces. I know their face, but that's all.

Q. Were the men that you saw when you arrived there, were they firemen?

A. No, sir.

Q. They were not firemen?

A. No, sir.

Q. Were they Railroad employees?

A. I believe they were.

Q. You had seen their faces?

A. The biggest part of them were, yes, sir.

Q. But you don't know what crafts they were in?

A. No, sir. Well, I think some of them were—in other words, I believe they were shop men.

Q. You believe they were shop men?

A. Yes, sir.

Q. When you went down there that evening did you have your street clothes or your work clothes on?

A. Well, I had on a pair of overalls—not overalls, but overall pants and shirt, just like I work in.

Q. In other words, you had on your clothes that you work in?

A. Yes, sir.

Q. What did you do after you arrived there?

A. Well, I rolled up there, and there was a crowd on each side of the street, pretty good crowd, and I went into the L&N Cafe across from the roundhouse entrance and drank a Coca-Cola, and come back out and went over there and stood around the fire.

Q. Stood around the fire?

A. Yes, sir.

Q. How far was the fire from the gate, about?

A. From the bridge?

Q. From the bridge, yes.

A. Oh, I guess about 30 or 40 feet.

Q. 30 or 40 feet?

A. Yes, sir.

Q. Now did you go back to work that night?

A. Yes, sir.

Q. What time did you go back?

A. Well, when they said the work stoppage was over a bunch of men out there in that crowd started going across the bridges. I don't know about the other bridge, but the automobile bridge, and I saw Mr. Mulvaney and I don't remember who else cross the bridge, and a bunch of men walking, so I walked in with the rest of them.

Q. When the crowd went back in, you went back in with them, is that right?

A. Yes, sir

Q. You haven't been paid for the time you were off during the strike, have you?

A. No, sir, not a dime.

Q. How is that?

A. Not a dime.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. You are not expecting to get paid for not working, are you, Mr. Sutterlin?

A. No, sir, I never could expect to be paid if I didn't do something for it.

Q. Let's go back to Saturday morning.

A. Yes, sir.

Q. Before the strike on Sunday.

A. All right.

Q. You told us I think that McCutcheon and Thomas told you there was going to be a meeting at Shorty Parker's house Sunday night?

A. Yes, sir.

Q. Now, about what time of day or night did they tell you that?

A. It was about, I'm going to say about 6:00 o'clock on Saturday morning.

Q. You were working the third shift?

A. Yes, sir. I got off at 7:00.

Q. Do you know Mr. Parrot?

A. Yes, sir, I was working with him at that time.

Q. He was the engineer on the engine you were on then?

A. Yes, sir.

Q. Was he?

A. Yes, sir.

Q. Did Reese Thomas give you any message or tell you anything to tell Mr. Parrot Saturday morning?

A. Yes, sir, but I have forgotten it.

Q. He did tell you to tell Parrot something, didn't he?

A. Yes, sir.

Q. Now, I want you to take all the time you want to, Mr. Sutterlin, and see if you can remember what he said.

A. (No response.)

Q. Do you remember?

A. No, I don't.

Q. To refresh your recollection, I will ask you if Thomas didn't tell you to tell Parrot that if the firemen had a strike, he didn't want Parrot to let Laney keep him in this time, or words to that effect?

A. It was something like that. Mr. Parrot worked in the other work stoppage or strike.

Mr. Taylor:
We object to that.

A. Strike, yes.

Mr. Taylor:
We move to exclude the voluntary statement.

The Court:
I sustain the objection as to the voluntary statement. That is excluded, gentlemen.

Q. All right, sir. Now, Reese Thomas told you to tell that to the man that you were working with, didn't he?

A. He told me to tell Mr. Parrot that if we struck the firemen struck Sunday. He didn't say Sunday, if the firemen struck, not to let Mr. Laney keep him in there working like he did before.

Q. Laney now is the Local Chairman of the Engineers?

A. Yes, sir.

Q. Did you tell Parrot that?
A. Yes, sir.
Q. What did Parrot say?

Mr. Taylor:
We object to that.

The Court:
Sustained.

Mr. Gibson:
All right.

Mr. Simpson:
The Court sustained the objection, as I understand it.

The Court:
Yes, sir.

Mr. Simpson:
The witness was about to answer.

Q. Now, what time did you get to that meeting at Parker's house, Mr. Sutterlin?
A. At Mr. Parker's house?
Q. Yes, sir.
A. About 4:25 I guess, or 4:30; right close to 4:30.
Q. Did you know when you got there what the meeting was going to be about?
A. No, sir, nothing except the abolishment of those hostler helpers jobs, is what I understood.
Q. Well, Reese Thomas and McCutcheon had told you the meeting was going to be over that, hadn't they, Saturday morning?

A. They told me Saturday morning that they was going to have a meeting at Shorty Parker's to see what they could do about the abolition of these jobs.

Q. So when you got there you knew what the meeting was going to be about, didn't you?

A. Yes, sir.

Q. Now, I believe you said that you heard Mr. Kennedy tell the people there that he had talked to Jake Paschal?

A. Yes, sir.

Q. Jake Paschal is the General Chairman?

A. For the Firemen.

Q. For the Fireman?

A. Yes, sir.

Q. Over the whole L&N System, is that right?

A. Yes, sir.

Q. And Mr. Paschal had told Kennedy to come to the meeting and give the men a message from him?

A. Yes, sir.

Q. That if they had a strike it would be an illegal strike, a wildcat strike, that the Union wouldn't authorize it?

A. Yes, sir, that's what I understood.

Q. And warned the men not to do it?

A. Yes, sir.

Q. You heard him say that?

A. Yes, sir.

Q. What, if anything, did you hear said following that?

A. I believe Mr. Otts said he couldn't tell us to strike or not to strike.

Q. Mr. Otts said he was not going to tell you either way what to do?

A. That's what I understood, yes, sir.

Q. He is the Local Chairman of the Firemen's Lodge, Local, wasn't he?

A. Yes, sir, so far as I knew he was.

Q. And the Local Chairman is the man who handles grievances for the people in his particular Local, isn't he?

A. Yes, sir.

Q. And it is his job to straighten out, if he can, anything that they are dissatisfied about and don't like?

A. Yes, sir, I guess so.

Q. And he told his men that he couldn't tell them to strike or not to strike, didn't he?

A. I think that's what he said.

Q. Yes, sir. You heard Reese Thomas have something to say in there, didn't you?

A. Yes, sir, he said several things, but I didn't catch all of it.

Q. He wanted to "Pull the pin", didn't he?

Mr. Taylor:
We object to what he wanted to do.

The Court:
I sustain the objection.

A. I heard something—

Q. He said he wanted to, didn't he?

The Court:
I sustain the objection.

A. I heard some one say "Let's pull the pin." It sounded like him, but I wouldn't say positive.

Mr. Taylor:
We object to the statement that it sounded like him.

The Court:
I sustain the objection.

Q. You heard it said in there, didn't you?
A. Yes, sir.
Q. Was it said in a whisper or said in a loud voice?
A. In a loud voice.
Q. All right, sir.
A. A pretty good crowd there, and I couldn't hear much of it, but I heard the "Pull the pin" part.
Q. Who was it at that meeting that asked you to picket?
A. Now, I don't remember that now.
Q. Don't you remember testifying on your deposition down here in May, of this year? Don't you remember that?
A. Yes, sir, but that has been quite some time now, and a lot of water went over the mill, over the dam I have forgotten right now; I hadn't give it no thought.
Q. All right, sir, let me ask you if in that deposition these questions were asked you, and these answers given by you:
"Q. Before you left there did you hear or see anything said about pickets?
"A. I don't remember nothing special said about them, I don't believe."
Mr. Pettus, this is page 34.

Mr. Pettus:
Go ahead.

Mr. Gibson:
All right.

"Q. Well, I'm not asking you about anything special, I am asking you if you heard the word 'picket', the word 'picket' mentioned? You can't have a strike or work stoppage without pickets, can you?" And if you didn't answer:

"No, sir.

"Q. All right, sir. Now, did you hear them talking about pickets or picketing?"

And if you didn't make this answer:

"It seems like some one in the group mentioned that we ought to have some pickets, if they struck. I don't know what groups they were.

"Q. Do you remember what man it was?

"A. No, sir.

"Q. Well, did they ask you to picket?

"A. I don't remember for sure. I think they did.

"Q. Somebody in the crowd asked you?

"A. Somebody in the crowd asked me would I be one if they needed me.

"Q. All right.

"A. I'll put it that way.

"Q. Do you remember who asked you to picket?

"A. No, sir."

Were those your answers?

A. Yes, sir.

Q. All right, sir. Now, who was it Mr. Sutterlin who asked you to picket?

A. I don't know. There was so many talking around at that time.

Q. Well, you were paying attention to what was being said?

A. Trying to.

Q. That's the reason you were at the meeting?

A. Yes, sir, I was trying to keep some of them quiet, trying to get them to see Mr. Kennedy's way, and so many was talking at once that I don't think anybody heard anything.

Q. You were listening, and you did some talking?

A. Yes, sir.

Q. All right. I will ask you to tell this Court and this jury if it wasn't J. B. Otts who asked you to picket?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Was it Howard Anderson?

A. No, sir, it wasn't Mr. Anderson.

Q. Now, you know as a matter of fact, Mr. Sutterlin, that you do remember who asked you that, don't you?

Mr. Byrd:

We object to arguing with the witness.

The Court:

Sustained.

Q. You remember it, don't you?

A. Yes, sir.

Q. All right. Was it Reese Thomas?

A. (No response.)

Q. Tell the Court, and tell the jury, was it Reese Thomas or wasn't it Reese Thomas?

A. Yes, sir.

Q. All right, sir. It was Reese Thomas?

A. Yes, sir. Some one else caught me by the arm at that time, and you know, led me up there close to where the main crowd was, but I don't remember who it was.

Q. Where were you when they took the vote?

A. I don't know. I was there in the crowd.

Q. They took one, didn't they?

A. I don't remember what it was, there was so much talk going on, and it has been so long.

Q. Well, you know they took a vote in that meeting, whether or not to have a strike, don't you?

A. That's been a year ago, and it has been so much said that I have forgotten.

Q. Mr. Sutterlin, let's see if we can refresh that recollection on this. We are referring again to the deposition that you gave us in May, of this year. You tell us now that you didn't see them take a vote in that meeting, don't you? Did you say you did not see them take a vote, or you didn't know?

A. I didn't see them, no, sir.

Q. But you know one was taken, don't you?

A. Yes, sir, on something. I don't remember what it was.

Q. Now, that wasn't a very big room you were in, was it?

A. No, sir, it was about 20 by 30 I guess, approximately; pretty good size basement.

Q. And there wasn't anything wrong with your hearing, was there?

A. No, sir.

Q. Well, did you hear a vote called for?

A. (No response.)

Q. Do you understand that question?

A. Ask that question again, will you, please, sir?

Q. I said did you hear a vote called for.

A. Yes, sir, about something, but I don't remember now.

Q. Let me read to you certain questions and answers from your deposition.

A. That has been a long time.

Q. In May of the year 1956, and ask you whether or not these questions were asked you and these answers given by you at that time, beginning on page 30, about a third of the way down the page:

"Q. Now then, who did—you did see them having a show of hands in there, didn't you?

"A. Well, I can't say that I did because I turned my back and was looking at the refrigerator."

Did you make that answer?

A. Yes, sir.

Q. And, reading further:

"Q. At the time this vote was taken you looked away?

"A. Whatever they were doing, yes, sir."

A. Yes, sir.

Q. Did you make that answer?

A. Yes, sir.

Q. And then the question:

"Q. You didn't want to be—

"A. No, sir, I didn't want to be involved in it because I was opposed to a strike, if they wanted to strike.

"Q. So at the time they called for this vote you looked away?

"A. Yes, sir, I couldn't do nothing with them."

Did you make that answer?

A. Yes, sir.

Q. All right.

"Q. You can't tell us who held up his hand on it or not?

"A. No, sir, I don't know that they voted to strike or not.

"Q. You just looked away?

"A. Yes, sir."

Did you make those answers?

A. Yes, sir.

Q. Now, you don't know who voted which way?

A. No, sir, I—

Q. But you did hear a vote called for?

A. Yes, sir.

Q. And that vote was on the question of whether or not to "Pull the pin" or pull the strike, wasn't it?

Mr. Taylor:

May it please the Court we object to that. He has already stated he doesn't know what the vote was for.

The Court:

Overruled. Cross examination.

A. Ask me that question again, please, sir.

Mr. Gibson:

Read it to him, please.

(The question was read.)

A. Yes, sir.

Q. Do you remember when Logan and Vann and Kennedy got up and walked out of the meeting?

A. Yes, sir, when I got ready to leave too.

Q. That vote was taken before then, wasn't it?

A. Yes, sir.

Q. You heard it said that anybody who wouldn't strike to keep another man from losing his job had a yellow streak up his back, didn't you?

A. I heard something to that effect. I don't remember now what it was.

Q. Who said it, if you remember?

A. Now I don't remember who said that, because I wondered what they thought about me, because I didn't vote.

Q. You heard it said that anybody who was not in favor of being a picket, or wouldn't be a picket, should get out of the meeting, or ordered to get out or should be thrown out or something like that, didn't you?

A. Uh—

Q. You heard that said, didn't you?

A. Yes, sir.

Q. Who said it?

A. I am not positive. There was three or four there in the crowd, oh, about as far as from me to this gentleman here (indicating). I think Mr. Barnett and Mr. Anderson and Mr. Letchman were there in that little crowd, as well as I remember.

Q. And after that—

A. They said that they ought to ask Mr. Kennedy and Mr. Vann and Mr. Logan to leave if they were not men enough to protect their jobs. I believe that's the words they said.

Q. Did they then leave?

A. Sir?

Q. Did Logan and Vann and Kennedy then get up and leave?

A. No, sir.

Q. Well then what happened after that?

A. Well that—Mr. Kennedy was by the side of me—not by the side of me, the icebox was between us, refrigerator. Mr. Kennedy, Mr. Logan, and Mr. Baum was over there, and the next thing I knew in the milling around they wound up right in the corner, cater-cornered right opposite from where they were.

Q. Did you stay where you were by the icebox?

A. I was on the—see, this is the icebox, I was on the right side, and they were on the left side.

Q. That is the icebox you were looking at when they took that vote?

A. Yes, sir.

Q. All right.

A. I just turned around and looked at the icebox.

Q. Now after the vote was taken, somebody got busy with a picket list, didn't they?

A. I don't know what kind of list they had, if they had one.

Q. Well, you saw a group of men gathered around one man somewhere in that crowd, didn't you?

A. Yes, sir, there was a pretty good bunch gathered around.

Q. Well, who was that man? Was it Jim Brown?

A. I don't remember now. Mr. Brown was there.

Q. You were paying pretty good attention to what was going on, weren't you, Mr. Sutterlin?

A. Well, yes, sir, but I couldn't hear everything.

Q. Well, you heard some names being called out by a group around one man in the meeting, didn't you?

A. Yes, sir, I heard several names called out by several men I believe.

Q. Whose names did you hear called?

A. Well, I don't remember now.

Q. Tell us one.

A. Mine was one of them.

Q. Oh, your name was called out as a picket?

A. Well, they called my name out and wanted to know if I would be a picket if he needed any.

Q. What did you say? Did you say you would?

A. I told them I didn't want to, but if they had to have any I would be.

Q. Did you give your name to the fellow that was making the list?

A. No, sir, I didn't.

Q. Did you hear anybody else call out your name to the man that was making the list?

A. Yes, sir.

Q. Who was it that called your name out if you know?

A. I don't remember, there was so many.

Q. You don't remember?

A. There was—they called some one else before me. I think I was the second man that they called for whatever they wanted. I don't remember what it was.

Q. Well, you know that was a picket list, don't you?

A. I presumed it was.

Mr. Taylor:
We object.

Q. You presumed it was?

The Court:
Sustained.

Mr. Taylor:
We object to Mr. Gibson's statement after that, and ask that be excluded.

The Court:
All right, that will be excluded, gentlemen, and the answer too.

Mr. Gibson:
I was just quoting him.

Mr. Taylor:

Quoting inadmissible evidence.

Q. Now, Mr. Sutterlin, you left I believe you tell us right after Logan and Vann and Kennedy?

A. Yes, sir.

Q. Did you hear about the meeting down at Rex's later on that night?

A. They said something about going somewhere as I was going out the door.

Q. You knew that there was—

A. Just before I went out the door, rather.

Q. You heard it said for everybody to come down to Rex's that night and go through the Yard and clean it out and get this thing going, didn't you?

A. I don't remember that now.

Q. I will ask you, Mr. Sutterlin, whether or not in May, of 1956, you were asked these questions and made these answers, on page 40:

"Q. You left, and you say, not knowing definitely whether your Railroad was going on strike or not?

"A. Well, I couldn't say it was or wasn't, but I figured they were.

"Q. You figured they were, and you figured what time it was going to happen?

"A. Well, before the third shift went to work.

"Q. You knew the stoppage was coming before 11:00 o'clock, didn't you?

"A. Well, I didn't know it right then because they were supposed to get together later."

Did you make those answers?

A. Yes, sir.

Q. All right, continuing:

"Q. They were supposed to get together later down at Rex's Barbecue, weren't they?"

A. Yes, sir.

Q. And your answer was "Yes, sir", you made that answer?

A. Yes, sir.

Q. And then the question "Well, did they tell you to come down to Rex's Barbecue that night?" And did you answer "Well, they just said everybody."

Did you make that answer?

A. Yes, sir.

Q. Did you hear some one in the meeting say this or this in substance: "I don't want to be a picket, but I do want to be on the ball bat detail", or words to that effect?

A. (No response.)

Q. Do you understand that question, Mr. Sutterlin?

A. Let's see. Ask that again, please, sir.

Q. Tell this Judge and this jury whether or not you heard said in the meeting at Shorty Parker's as or this in substance: "I don't want to be a picket, I want to be on the ball bat detail"?

A. No, sir, I didn't hear that.

Q. Did you hear anything like that?

A. I heard something like that. I have forgotten now what it was.

Q. Did you say it?

A. No, sir.

Q. You know it was said and you heard J. M. Weldon say it, didn't you?

A. No, sir, I don't believe it was Mr. Weldon. It was some one else.

Q. Was it Reese Thomas?

A. Pardon?

Q. Was it Reese Thomas.

A. No, sir, they said Mister—whoever made the remark said "Mr. Weldon wants to be with us on the"—some kind of detail.

Q. Was it the ball bat detail?

A. When they asked Mr. Weldon to be a picket, or if he wanted to be a picket I mean.

Q. Somebody said "Mr. Weldon wants to be on the ball bat detail"?

A. Yes, sir.

Q. Is that it?

A. I believe that was it, something like that, in other words, or something.

Mr. Gibson:

All right, you may come down.

Mr. Taylor:

Just a minute. Your Honor, this witness has given what to me has been surprise testimony concerning one of my clients. I would like the privilege of cross examining him.

The Court:

All right.

Mr. Gibson:

You want to cross examine your own client?

Mr. Taylor:

He's not my client, and not my witness.

The Court:

Gentlemen we are at recess time, and we are going to take a 20 minutes recess.

(A short recess was had.)

Mr. Taylor:
Your Honor, shall I proceed?

The Court:
Yes, you may proceed.

Re-Direct Examination.

By Mr. Taylor:

Q. Mr. Sutterlin, you told Mr. Gibson that, if I understood your testimony correctly, that Mr. Reese Thomas told you or asked you if you would perform picket duty. Is that what you testified to Mr. Gibson a minute ago?

A. He asked me to be a picket.

Q. All right. And I believe you also testified that he had that conversation with you at the meeting at Mr. Parker's house, is that right?

A. Ask that question again, please.

Q. I believe you testified, I am just trying to get the situation correct, I believe you testified a moment ago in response to Mr. Gibson's questions that you had this conversation with Mr. Thomas at the meeting at Mr. Parker's house on Sunday afternoon, is that correct?

A. I didn't have any conversation with Mr. Thomas at Mr. Parker's house.

Q. Well, did you testify, or did you not, a moment ago, that on Sunday afternoon Mr. Reese Thomas asked you if you would perform picket duty?

A. I think he—

Q. I'm asking you what you testified a moment ago. I want to ask you the right questions, but I want to make sure I understand you.

A. He asked me to do picket duty?

Q. I am asking you, sir, if that is what you said just a moment ago when Mr. Gibson was asking you questions.

A. Let me get that question now. You asked me if Mr. Thomas asked me to do picket duty?

Q. No, sir, I asked you if you testified just a few moments ago, when Mr. Gibson was questioning you, if you didn't say at that time that Mr. Thomas asked you if you would do picket duty?

A. No, sir.

Q. What did you testify when Mr. Gibson asked you about that?

A. Mr. Thomas said I—let me see, Mr. Thomas said "He'd make a good picket."

Q. Is that what you told Mr. Gibson a minute ago?

A. I told him he wanted me to do picket duty.

Q. All right. Now—

A. I believe that's what I told him.

Q. When you gave your deposition back up here in May, of this year, you didn't say anything about Mr. Thomas asking you to do picket duty, did you?

A. No, sir.

Q. Who was the first person you told that Mr. Thomas asked you to do picket duty?

A. I told these lawyers.

Q. Is that the only time you have ever said it?

A. Yes, sir.

Q. And you didn't say it when you were up here and gave your deposition in May, did you?

A. No, sir.

Mr. Simpson:

We object. It doesn't appear that he was asked.

The Court:

Overruled.

Q. And the same lawyers asked you about it at that time, didn't they?

A. I beg your pardon.

Q. These same lawyers here asked you about it at that time, didn't they?

A. I don't remember.

Q. All right. Now, did you ever have a head injury when you were a child?

A. Yes, sir.

Q. What was the nature of that injury?

A. I got a fractured skull at a baseball game.

Q. Did a portion of your skull have to be removed?

A. Yes, sir. I told Mr. Pettus about it this morning. He asked me about it.

Q. Was there any plate or anything put in your skull?

A. No, sir.

Q. Was there a depression or hole in your skull for a long time?

A. Yes, sir.

Q. Is it still there?

A. No, sir, there is a dent there.

Q. Now, have you had any conversation while this trial has been going on with a man named Laney?

A. No, sir.

Q. You haven't stood out there in the hall and talked to Mr. Laney on many occasions while this trial has been going on?

A. I spoke to him, but not about this.

Q. Well, you spoke to him, haven't you?

A. Yes, sir, but not about this trial.

Q. All I asked you was if you spoke to him?

A. Or anything concerning it. Pardon?

Q. All I asked you was if you spoke to him.

A. Yes, sir, I spoke to him. I spoke to you and the rest of these gentlemen.

Q. I didn't ask you that. How many times did you talk to Mr. Laney since this trial has been going on?

A. Well, I spoke to him yesterday.

Q. He was a witness brought up here by the L&N Railroad, is that right?

A. I don't know whether he was or not, I didn't ask him.

Q. Mr. Laney is an official of the Engineers Organization?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you engage in any outside activity?

A. No, sir.

Q. You are in the television repair business, aren't you?

A. I've got a hobby of television repairs.

Q. Don't you repair television sets and get paid for it?

A. If anybody wants to give me anything, I take it, yes, sir.

Q. Well, they do give you something on occasion for repairing television sets, don't they?

A. Yes, sir.

Q. Are you familiar with the rules of the Railroad that say that you cannot engage in outside activities?

A. Yes, sir.

Q. You say yours is just a hobby, is that right?

A. Mine is just a hobby. Anybody has a right to have a hobby.

Q. Let me ask you this. Mr. Sutterlin, you made a statement to Mr. Robey about this case, didn't you?

A. No, sir, I don't know the man, and still don't know him.

Q. Regardless of whether you know his name or not, you made a statement to an L&N official or somebody employed by the L&N Railroad about this case, didn't you?

A. No, sir.

Q. You say you never did?

A. No, sir; no other official, or no one else either, except Mr. Pettus, I talked to him about it.

Q. Are you telling this jury that the first time you ever spoke those words about Reese Thomas asking you to picket was when Mr. Gibson asked you that question a few minutes ago?

A. Ask that again, please, sir.

Q. Are you telling this jury that the first time you ever told anybody that Reese Thomas asked you to picket was when you told it on that witness stand a few minutes ago?

A. Yes, sir.

Q. That's the first time you ever told a living soul?

A. Yes, sir. There's a lot of other things that I could tell, but I'm not going to.

Q. Now, Mr. Sutterlin—

A. Yes, sir.

Q. —getting back to your knowledge of this meeting here, isn't it a fact that you called, made a signal to Mr. Thomas and Mr. McCutcheon on their engine, and got up and asked them if there wasn't going to be a meeting in Shorty Parker's house?

A. No, sir. They called me off of that other engine. I asked them was we getting a swap off, and they said "No, its for the other job. But come over here, I want to tell you something." Mr. Thomas told me that. Then I went over there to see what he wanted.

Mr. Taylor:

That's all, Mr. Sutterlin.

The Court:
Is there anything further?

Mr. Gibson:
You can come down.

(Witness excused.)

Mr. Pettus:
Mr. M. L. Hall.

M. L. HALL, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. M. L. Hall.
Q. Where do you live?
A. 137 Springdale Road, Birmingham.
Q. Are you employed by the L&N Railroad Company?
A. Yes, sir.
Q. What do you do?
A. Fireman.
Q. Were you so employed in October, 1955?
A. Yes, sir.
Q. Are you a member of a labor organization?
A. Yes, sir.
Q. What organization are you a member of?
A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you work on Sunday, October 23?
A. Yes, sir.
Q. 1955 that is?
A. Yes, sir.
Q. What time did you get off work then?
A. 3:00 o'clock I believe.
Q. 3:00 o'clock?
A. Yes, sir.
Q. Had you heard of a meeting being at Mr. Parker's house on that day?
A. On that day, yes, sir.
Q. Did you attend that meeting at Mr. Parker's house?
A. Yes, sir.
Q. About how many men were present at that meeting?
A. Well, some 15 or 20.
Q. 15 or 20?
A. Maybe 25. I don't remember just how many there were.
Q. Have you got any names to add to those that have been called out here as being present at the meeting?
A. No, sir, not that I know of.
Q. By the other witnesses?
A. No, sir.
Q. About what time did you arrive, or what time is it your recollection that the meeting got underway?
A. Around 4:30.
Q. Around 4:30?
A. Yes, sir.
Q. What was the subject of the discussion?
A. Abolition of the hostler helpers.
Q. Now, did you make any statements at the meeting?
A. Not that I remember of.

Q. Do you recall other statements that were made at the meeting?

A. Well, there was some discussion about the hostler helpers jobs, yes, sir.

Q. Some discussion?

A. Yes, sir.

Q. Do you recall what that was?

A. Well, to get the jobs restored, if the proper channels were taken.

Q. Do you recall anything that was specifically said along those lines? Just state what you recall as to what was said, and who said it, just your best recollection of it.

A. Well, there was several groups talking, I don't remember exactly who said what.

Q. How long did you stay at the meeting?

A. I stayed until it was over.

Q. When was that, about how long did it last?

A. Well, some 25 or 30 minutes I imagine.

Q. When the meeting ended, after the meeting was over, where did you go?

A. I went home.

Q. And how long did you stay there?

A. I don't know. I stayed at home until somewhere around 8:30 or 8:45.

Q. Then where did you go?

A. I went down to Rex's.

Q. And about what time did you arrive at Rex's?

A. I don't know exactly, somewhere around 8:50 I imagine.

Q. Did you stay in the vicinity of Rex's or did you go elsewhere?

A. No, sir, I went up to the Yard.

Q. You went up to the Yard?

A. Yes, sir.

Q. Did you see anybody up there at the Yard?

A. Yes, sir.
Q. Who did you see?
A. Mr. Simrell.
Q. About what time was that?
A. Somewhere around 9:00 or 9:05.
Q. Did you have any conversation with Mr. Simrell there?
A. Yes, sir.
Q. What was that conversation?
A. I asked him if he could sharpen a saw for me the next morning.
Q. Did he say he could or could not?
A. He said he would get it.
Q. He said he could get it?
A. Yes.
Q. Did you have any other conversation with him on that occasion?
A. Not that I remember of.
Q. Did you see anyone else while you were in the Yard?
A. I saw several men working.
Q. Several men were working?
A. Yes, sir.
Q. Did you have any other conversation with anybody?
A. No, sir.
Q. How long did you stay in the Yard?
A. I don't know exactly, just long enough to walk up there to Mr. Simrell's, and straight back.
Q. And straight back?
A. Yes, sir.
Q. By "back" you mean back to Rex's Barbecue?
A. No, sir.
Q. Where did you go then?
A. I went in my car from Rex's Barbecue to the Master Mechanic's gate. I left my car there.

Q. You left your car there?

A. And walked.

Q. Did you get in the car then?

A. Yes, sir.

Q. Where did you go?

A. I went home.

Q. You went home?

A. Yes, sir.

Q. About what time did you arrive at home?

A. About, I don't know, somewhere about 9:30, I imagine, 9:25.

Q. Did you stay at home the rest of the evening or did you go anywhere?

A. No, sir, I stayed at home.

Q. Now, on Monday did you return anywhere to the Rex's or go anywhere in the vicinity of the Boyles Yards?

A. No, sir.

Q. How about on Tuesday?

A. I think I went down there Tuesday morning.

Q. You went down Tuesday morning?

A. Yes, sir.

Q. Where did you go?

A. I went down to the roundhouse I believe, or down to the Rex's, across from the roundhouse.

Q. Down to Rex's?

A. Yes, sir.

Q. How long did you stay there?

A. I didn't stay there very long, I don't remember exactly.

Q. Did you see anybody on that occasion that you knew, that you can recall?

A. Not in particular. There was a lot of men gathering around there.

Q. You are going to have to speak up so we can hear you.

A. All right.

Q. When you were down there did you threaten anyone or have any conversation with anyone that you recall?

A. Not that I recall.

Q. You didn't use any violence on anybody while you were down there, did you?

A. No, sir.

Q. How about Wednesday, what did you do on Wednesday?

A. I don't remember. It seems like I worked some on my house Wednesday.

Q. Worked some on your house?

A. Yes, sir.

Q. Did you go down in the vicinity of the Boyles Yard on Wednesday at any time that you recall?

A. I don't recall if I did.

Q. You don't recall?

A. No, sir.

Q. When did you go back to work?

A. I believe it was Wednesday night.

Q. Wednesday night?

A. The 27th I believe, I am not sure.

Q. Were you off for the three days that the work stoppage was in force?

A. Yes, sir.

Q. And were you paid for those three days?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Hall, when you got off at 3:00 p. m. that afternoon, you had finished your shift with the Railroad, had you not?

A. Yes, sir.

Q. You were not due to go back on duty until when, the following morning?

A. No, sir, until they called me.

Q. You had no duties at the Railroad beginning early Monday morning that you had already been assigned to?

A. No, sir.

Q. You didn't have any business in the Yard Sunday afternoon or Sunday night?

A. Not so far as the Railroad is concerned.

Q. Yes, sir. All right. Now, you say that you got to the Parker meeting about 4:30?

A. Somewhere thereabouts.

Q. You got there about the time it started, I take it?

A. Yes, sir.

Q. We won't go into how you heard about it, but you did get to the meeting, and you have heard testimony here, offered, about who was there, and you recall that those people were there do you not, sir?

A. Yes, sir.

Q. All right, sir. Now, you stayed until the meeting was over, you told Mr. Battus?

A. I think it was over, yes, sir.

Q. During that meeting they discussed the hostler helpers jobs, didn't they?

A. Yes, sir.

Q. They discussed procedures to get those jobs back, didn't they?

A. Yes, sir.

Q. That was the main topic of conversation there, wasn't it?

A. Yes, sir.

Q. And the men there recognized that they individually could not do anything about those jobs, getting them back, didn't they?

A. Well, I don't know.

Mr. Pettus:

We object to the question as to what the men realized.

The Court:

Sustained.

Q. And it was said there that individually they could do nothing about getting the jobs back, but that they could band together possibly and do it?

A. I don't remember.

Q. Do you remember something about that?

A. I don't remember any statement like that.

Q. Do you say that was not said there?

A. I don't know. I said I didn't remember it being said, I don't recall it.

Q. Let me refer you to this. Do you remember when you testified earlier in this case, and we had your deposition taken?

A. Yes, sir.

Mr. Smith:

At page 120, Mr. Pettus.

Q. Let me read these questions and answers, Mr. Hall, and see if it refreshes your recollection any extent:

"Q. All right now. I believe you told us that in this meeting up there at Mr. Parker's on Sunday afternoon, the 23rd of October, you all agreed that you could not individually do anything to help Mr. McCutcheon and the other hostler helpers that had been laid off, is that right, by yourself individually, separately?

"A. That's right.

"Q. You couldn't do anything to help?

"A. Yes, sir.

"Q. You agreed on that, I am sure?

"A. Yes, sir.

"Q. But that you would, as I believe has been said, band together to try to help them?

"A. Yes, sir."

I will ask you if those questions and answers weren't made at the time your deposition was taken earlier, pretrial deposition in this case?

A. Yes, sir.

Q. Now, there was some discussion of getting together and helping to get those jobs back?

A. Yes, sir.

Q. Now in discussing ways to get the job back, I believe you said, was there some mention of channels, taking it through channels, is that right, sir?

A. Yes, sir.

Q. Now there also was some mention made of a strike, wasn't there, Mr. Hall?

A. Well, I don't know about a strike.

Q. Well, you recall that at that meeting there was a discussion about whether a strike would be the proper procedure or not, don't you?

A. There could have been, yes, sir.

Q. Well, you recall that there was, don't you?

A. Well, I am not positive about that, I don't recall everything.

Q. You don't have a clear recollection on that?

A. No, sir.

Q. Let me read you a few more questions here. Mr. Pettus, this is page 97.

Let me ask you, as a matter of fact, Mr. Kennedy made a statement there about a strike being unwise, didn't he?

A. He made something, some remark to that effect, yes, sir.

Q. Then there was some mention made of a strike at the meeting?

A. He made mention of it, yes, sir.

Q. Let me read this to you, sir, page 97:

"Q. Well, to refresh your recollection, didn't Mr. Kennedy say if they went ahead and struck under those circumstances it would be an illegal strike?

"A. I believe he said something to that effect.

"Q. He said something to that effect?

"A. Yes, sir."

I will ask you if those questions were not asked you, and those are not the answers that you gave at the time you testified in your pretrial deposition?

A. Yes, sir.

Q. All right. Now, as a matter of fact, the matter of whether or not a strike would be taken, or strike

would be used, was discussed in the meeting generally, wasn't it, Mr. Hall?

A. I don't know that it was discussed generally.

Q. It was discussed, wasn't it?

A. It was discussed.

Q. Yes, sir. Do you recall when the question was put to a vote?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. You don't tell this jury that there was no vote taken on the question of whether there would be a strike or not, do you?

A. I am not saying there weren't.

Q. You are not saying that there was not a vote taken?

A. I didn't see one.

Q. You are not telling the jury that it was not done, are you?

A. No, sir, I am not telling them that it wasn't done.

Q. You were in the room during this entire meeting, weren't you?

A. Yes, sir.

Q. You were not looking at the icebox, were you?

A. I don't know if there is an icebox in there or not.

Q. Well, you heard Mr Sutterlin say he was there but he turned his head when the strike vote was taken?

A. Yes, sir.

Q. You didn't turn your head for any reason, did you?

A. No, sir.

Q. Now, I believe after you left that meeting, Mr. Hall, you say you went home?

A. Yes, sir.

Q. You went straight home?

A. Yes, sir.

Q. What time did the meeting break up?

A. Somewhere about 5:00, the best I remember.

Q. A little after 5:00?

A. Somewhere around 5:00.

Q. You went straight home?

A. Yes, sir.

Q. At any rate, when you got home, did you make any telephone calls?

A. No, sir.

Q. You did not?

A. Not that I remember of.

Q. Did you make a call on the way home?

A. Wait a minute,—I called Mr. Jordan and laid off.

Q. Yes, sir. you called Mr. Jordan and laid off?

A. Yes, sir.

Q. And I believe that the exhibit here shows that that was at 5:27. Is that about right?

A. Somewhere about there.

Q. That is approximately the time you laid off?

A. That's right.

Q. Now, Mr. Hall, at that meeting, before you broke up, you all had agreed to show up down at Rex's Barbecue that night about 8:30, hadn't you?

A. No, sir, I didn't come to no agreement to show up there.

Q. Sir?

A. No, sir, I didn't agree with nobody to come down there at 8:30.

Q. Well, it was discussed that people at that Parker meeting would get back down to Rex's Barbecue that night at about 8:30, wasn't it?

A. I don't recall it.

Q. You don't recall that?

A. No, sir.

Q. You won't tell us that wasn't discussed, will you?

A. I say I don't recall it.

Q. Wasn't it also discussed there at that meeting, at the Parker house that afternoon that they would go through those Yards there at 9:00 o'clock Sunday night and clean out the Yard?

A. No, sir I didn't hear that.

Q. You didn't hear that?

A. No, sir.

Q. You didn't hear it said that 9:00 o'clock was the time that you would show up down there and shut-down the Railroad?

A. No, sir.

Mr. Byrd:

We object to arguing with the witness.

The Court:

Overruled.

Q. Is that your testimony, that you didn't hear that?

A. No, sir, I didn't hear it.

Q. All right. But you did get down to Rex's about 8:50, didn't you?

A. Somewhere thereabouts.

Q. And you did go in the Yards at 9:00 o'clock, didn't you?

A. Yes, sir.

Q. And the Yard was going along perfectly normal when you walked in there, wasn't it?

A. Yes, sir.

Q. You had gotten in your car, that was right at Rex's, and driven to the Master Mechanic's gate, and then walked over to the area where Mr. Simrell was working, hadn't you?

A. Yes, sir.

Q. You had to walk through a part of the Yard to get there, didn't you?

A. Yes, sir.

Q. It was a good walk?

A. Yes, sir.

Q. How long in distance would you estimate that to be? Several blocks, isn't it?

A. No, sir, about two blocks.

Q. About two blocks?

A. Somewhere along there.

Q. You passed men working as you went through, didn't you?

A. Yes, sir.

Q. You knew those men, didn't you?

A. Yes, sir.

Q. Tell us who you saw as you walked through the Yard there?

A. They was working. I didn't go close to those men.

Q. Well, you knew them?

A. If I had gotten close to them. It was dark when I went through there.

Q. You don't know whether you knew them or not, is that what you tell us?

A. It may have been.

Q. It could have been, couldn't it?

A. Yes, sir.

Q. But you went through the Yard?

A. Yes, sir.

Q. And you told the jury a little while ago that you went over to see Mr. Simrell?

A. Yes, sir.

Q. You found him where?

A. Standing in front of the shack, south end of the North Yard shack.

Q. You found him at the south end of the North Yard?

A. Yes, sir.

Q. Mr. Simrell had come on duty at 3:00 o'clock that afternoon, hadn't he?

A. I suppose so.

Q. You knew that then, didn't you?

A. Well, his job went to work at 3:00 that afternoon.

Q. He went to work at 3:00?

A. Yes, sir.

Q. You had come off at 3:00 o'clock, hadn't you?

A. Yes, sir.

Q. And you hadn't gone over to that area to talk to him before you left the Yard that afternoon, had you?

A. I didn't work in that area.

Q. Sir?

A. No, sir.

Q. You were working there in the Yard that afternoon, weren't you?

A. No, sir, I got off before he came on.

Q. You said you got off at 3:00 o'clock?

A. Yes, sir.

Q. And he went on at 3:00 o'clock?

A. Yes, sir, but not off of that job.

Q. Yes, sir, but it would not have been any farther for you to go to see Mr. Simrell at 3:00 o'clock in the

afternoon than it was at 9:00 o'clock at night, would it?

A. No, sir.

Q. All right. But you didn't go to see him in the afternoon?

A. No, sir.

Q. While you were already down there?

A. No, sir.

Q. It occurred to you to go to see him at 9:00 o'clock Sunday night?

A. Yes, sir.

Q. All right. Now what did you talk to him about?

A. If he would sharpen a saw for me next morning.

Q. Now, Mr. Hall, you didn't take the saw with you, did you?

A. No, sir.

Q. You got in your car and left your house and drove to Rex's Barbecue, and then you got in your car again and drove over to the Master Mechanic's gate, and then you walked some two blocks through the Yard to see a man that you knew was there in the Yard that afternoon when you went off duty, and you hadn't made any effort to see him, to ask him if he could fix a saw, and you didn't take the saw with you? Is that what you tell the jury?

A. I didn't take it with me, no, sir.

Q. No, sir. Now, as a matter of fact, you had gotten him to sharpen the saw for you about a week before, hadn't you?

A. Some week or so, I don't remember exactly.

Q. The same saw, wasn't it?

A. Yes, sir.

Q. You thought you would go to see him and ask him if he could get that saw and sharpen it for you again?

A. I had, on two or three occasions, I had had saws sharpened.

Q. Now, Mr. Hall, Mr. Simrell said, I believe you told Mr. Pettus that Mr. Simrell said he would pick up the saw, is that what you told him?

A. Who would pick it up?

Q. Didn't I understand you to testify when Mr. Pettus was asking you questions that Mr. Simrell said yes, he could fix it, he would pick it up?

A. No, sir.

Q. He didn't say that?

A. He said he would get it for me.

Q. He said he would get it for you?

A. Yes, sir.

Q. He meant that he would sharpen it for you, is that right?

A. Yes, sir.

Q. Now, Mr. Hall, isn't it a fact that you went up to Mr. Simrell and told him to tell his fireman—who was his fireman, by the way?

A. They said it was R. E. Thomas.

Q. You know Mr. Thomas, don't you?

A. Yes, sir.

Q. Isn't it a fact you went up to Mr. Simrell and told him to tell his fireman to get out of the Yard right away?

A. No, sir. I don't recall that.

Q. Sir?

A. No, sir.

Q. That's not a fact?

A. I don't recall making any statement like that.

Q. You don't recall making any statement like that?

A. No, sir.

Q. I will ask you if it is not a fact that he asked you, Mr. Simrell asked you, Mr. Hall, "What are you fellows doing? Pulling a wildcat strike?" Didn't he ask you that question, Mr. Hall?

A. I don't recall it.

Q. You don't recall that?

A. No, sir.

Q. And didn't you answer that question by saying "You just tell him what I said"? Didn't you tell him that out there?

A. No, sir, I don't remember it.

Q. You didn't?

A. I don't recall that.

Q. You don't have any recollection of that conversation?

A. No, sir.

Q. But you recall about the saw pretty clearly, don't you, Mr. Hall?

A. That's what I went to see him about.

Q. Yes, sir. Now, Mr. Hall, so far as you knew when you went in the Yard that night everything was perfectly normal, is that what you are asking this jury to believe?

A. It was.

Q. It was working when you went in there, wasn't it?

A. Yes, sir.

Q. And you are telling us here, the Court and jury, that it just happened that you went into that Yard to see Mr. Simrell at 9:00 o'clock on Sunday night, is that your testimony, sir?

A. Yes, sir.

Q. That you just happened to go in there to see him about a saw?
A. Yes, sir.

Mr. Pettus:
We object to that as argument.

Mr. Smith:
No, that's not argument.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Are you telling this Court and jury that you just happened to go in there to see him about this saw at 9:00 o'clock?
A. That's what I went for.
Q. That's your testimony?
A. Yes, sir.

Mr. Smith:
I believe that's all.

Mr Pettus:
That's all.

The Court:
Come down Mr. Hall.

(Witness excused.)

The Court:
Call your next witness

Mr. Pettus:
Mr. Breedlove.

O. C. BREEDLOVE, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. O. C. Breedlove.

Q. You are one of the Defendants in the case?

A. I am.

Q. Where do you live?

A. 4317 33rd Avenue North.

Q. What do you do?

A. Locomotive fireman, engineer, and hostler for the L&N Railroad.

Q. Did you have that occupation in October, of 1955?

A. I did.

Q. Do you recall Sunday, October 23, 1955, the day that this work stoppage commenced?

A. Well, I wasn't here all day.

Q. You were not here?

A. No, sir.

Q. You recall the day though?

A. I recall the day, yes, sir.

Q. Had you worked that day?

A. I did, I had come in at 10:54, No. 2 passenger train, a. m.

Q. Then what did you do?

A. Well, I went straight home and I told my family, I said "Let's go to Elmore, we had a wreck at Elmore."

Q. Did you go to Elmore?

A. We went to Elmore to see the wreck, yes, sir.

Q. How far is Elmore from Birmingham?

A. It is, let's see, by highway about 80 or 90 miles.

Q. 80 or 90 miles?

A. Yes, sir.

Q. What time did you arrive at Elmore?

A. Well, I don't know, we stopped on the way and bought the kids ice cream. I had all of the children and my wife with me, and we bought cakes and Coca-Colas, just a family outing, you might say.

Q. Now, what time did you get to Elmore?

A. In the neighborhood of about 4:00 or 5:00—no, I beg your pardon, about around 4:00 or 4:30.

Q. Did you see the wreck?

A. Yes, sir, scattered on both sides of the road, cars out in the field.

Q. Did you then come back to Birmingham?

A. Not directly, no, sir.

Q. But you did come back that day?

A. Later on that night, yes, sir.

Q. About what time did you get back to Birmingham?

A. Oh, we got in around anywhere from 8:30, 45, or 9:00 o'clock, something like that, I don't remember the exact time. That's been eleven months ago.

Q. When you got back to Birmingham did you go home?

A. Yes, sir, went straight home.

Q. You went straight home?

A. Yes, sir.

Q. Did you stay at home?

A. Well, in about 10 or 15 minutes after I got there I went down and checked the board.

Q. Checked the board?

A. Yes, sir. I was on the pool board at that time, and I wanted to see what position I held, whether I would get out that night or not.

Q. Did you check the board?

A. I did, yes, sir.

Q. Where is that board located?

A. That board is located in the firemen and engineers washroom at Boyles, Alabama.

Q. About what time do you recall checking the board?

A. Oh, in the neighborhood of 8:45 or 9:00 o'clock, somewhere along in there.

Q. About that time?

A. Yes, sir.

Q. Now is that customary for you to go down and check the board?

Mr. Simpson:
We object to that, may it please the Court.

A. It is.

Mr. Simpson:
Leading, may it please the Court:

The Court:
Don't lead the witness on direct.

Q. After you checked the board, what did you do, if anything?

A. Well, I went back out to my car and went home.

Q. And went home?
A. Yes, sir.
Q. Did you stay at home?
A. Well, no, sir.
Q. Did you leave home later that evening?
A. About 10:00 o'clock my wife and I, after putting the children to bed, yes, sir.
Q. Then you and your wife left?
A. Yes, sir.
Q. Did you drive around?
A. Sir?
Q. Where did you go?
A. We drove down Vanderbilt Road.
Q. Did you see anybody or do anything on that drive?
A We seen a number of men, yes, sir, coming out the gate, at different places.
Q. How long did you stay out?
A. Oh, I guess we got back home about 10:30.
Q. Was your wife with you?
A. My wife was present with me at the time, yes, sir.
Q. Did you leave the house any further that evening?
A. No, sir.
Q. That Sunday evening?
A. I did not.
Q. On Monday, do you recall where you were?
A. Yes, sir.
Q. Where were you?
A. Monday morning I was at home. I—when the children got up I took them to school, one to—I mean two to Inglenook and one to Phillips High School.
Q. What did you do the rest of the day Monday?

A. Well, after—in coming back from Phillips I came down 12th Avenue to Vanderbilt Road, and I stopped at what they call the Hillside gate down there, entrance to the Wood Yard, and I parked my car at the entrance to that little Ornamental Iron Works there, just out of his driveway, and I sat there a while.

Q. What did you do, if anything?

A. I saw a group of men, maintenance men, signal men, car knockers. painters, and a general run of the mill of the employees out there at the L&N, fireman, a colored fireman, I believe his name was Al Smith, and a bunch of laborers stopped there.

Q. How long did you stay there?

A. Oh, I stayed there for, let's see, I got there at about, oh, in the neighborhood of 8:15 or 8:30, and I stayed there close to 11:00 o'clock.

Q. Did you get out and walk around or were you in your car?

A. I was sitting in my car, yes, sir, and standing on the outside of the car.

Q. Did you do anything that afternoon, Monday afternoon?

A. No, sir. I went and got the children from school.

Q. Did you come back to the vicinity of the Yard Monday afternoon again?

A. No, sir, I drove down Vanderbilt Road there. My family was with me, and we was out sight-seeing, you might say, to see what was happening. They wanted to know too.

Q. How about Monday night?

A. Monday night I spent the night at home.

Q. You spent the night at home?

A. Yes, sir.

Q. How about Tuesday?

A. On Tuesday I believe my wife and I went to Tarrant City and bought a dress pattern for the girl, I just gave her a ride.

Q. Did you go anywhere around the Yard or Rex's or any place on duty?

A. No, sir, I don't think I did. I don't recall that I did or not.

Q. How about Wednesday?

A. Wednesday? Let's see now. No, sir, I don't believe I went around there Wednesday.

Q. Do you know a man by the name of Saylor?

A. Yes, sir.

Q. Who is he?

A. Ed Saylor is a fireman.

Q. Is he the gentleman that testified here earlier in this case?

A. Yes, sir.

Q. Did you have any telephone conversation with him?

A. He called me, yes, sir.

Q. He called you?

A. Yes, sir.

Q. That was during the progress of the walkout?

A. Yes, sir, I believe it was. I don't remember whether it was Tuesday or Wednesday that he called me.

Q. You don't remember whether it was Tuesday or Wednesday that he called you?

A. No, I don't remember the days, no, sir.

Q. Do you recall what conversation you had with him?

A. Well, he asked me what to do, and I told him I was not at liberty to tell him what to do. He said "Well, reckon I ought to go somewhere?" I said "I'll

go to Hillside and sit down there and park, if you want to see what's going on", I said "That's your privilege."

Q. That's where you had been on Monday morning?

A. Yes, sir.

Q. Do you know Mr. Sexton who testified in this case?

A. Yes, sir.

Q. Did you have any telephone conversation with him?

A. I did not.

Q. You did not have any telephone conversation with him?

A. No, sir.

Q. When did you go back to work?

A. I went to work at hostling the third shift Wednesday night. They called me on the board, that's why I stayed at home, I was expecting a call at the time. I was ready to go to work.

Q. You went to work Wednesday night?

A. I went to work Wednesday night. I worked outside hostling job. I went to the Yard and gathered up Diesels out there.

Q. During the time that this work stoppage was in effect did you use any violence on anybody?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. Did you threaten anybody?

A. No, sir.

Q. Intimidate them?

A. No, sir.

Q. Did you tell anybody else to use violence or threaten anybody?

A. Absolutely not.

Q. You were not paid for the time during the work stoppage, were you?

A. No, sir.

Q. What is your average daily pay?

A. Well, it varies; in the Yard $15.87.

Q. $15.87?

A. Yes, sir.

Mr. Pettus:

All right, that's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Breedlove, do you know Mr. D. C. Vann?

A. D. C. Vann, yes, sir, I am acquainted with him.

Q. Do you remember whether or not you requested him to do picket duty?

A I did not.

Q. On the 26th?

A. I did not.

Q. Do you know Mr. Vann is a fireman?

A. Yes, sir. I know Mr. Vann. And Mr. Vann has fired for me.

Q. You were sitting in here when Mr. Vann testified?

A. Yes, sir.

Q. If he said that he was mistaken then, wasn't he?

A. He absolutely was.

Q. Do you know Mr. F. L. Fleming?

A. Fleming? Yes, sir, I know Mr. Fleming.

Q. Did you ask Mr. Fleming to do picket duty?

A. I did not.

Q. On Sunday?
A. I did not.
Q. Mr. Fleming is a laborer?
A. Mr. Fleming was a hostler helper.
Q. Yes, sir.
A. And he was cut off, and went back to laboring.
Q. He has a laborer's classification now?
A. He does, yes, sir.
Q. You sat in here and heard Mr. Fleming testify?
A. I did.
Q. What he stated wasn't true?
A. It absolutely was not.
Q. How long have you known Fleming?
A. Ever since I have been with the Railroad.
Q. That's how long?
A. Nearly 14 years.
Q. He has been there longer than you have, hasn't he?
A. I think he has, yes, sir. He was there when I came there.
Q. Vann has been there nearly as long as you have?
A. No, sir.
Q. Vann is a younger man, 8 or 9 years?
A. I was a promoted engineer when Vann began to work there.
Q. Now, do you know Mr. E. L. Sexton?
A. I do.
Q. I will ask you whether or not you on Wednesday called Mr. Sexton and asked him—
A. I did not.
Q. —to do picket duty?
A. I did not.
Q. You heard Mr. Sexton testify—
A. I did.

Q. —to that, didn't you?

A. I did.

Q. Didn't you ask Mr. Sexton to do picket duty because at that time there was a bunch of switchmen trying to go in down at that Hillside gate?

A. I didn't even call Mr. Sexton, Mr. Simpson.

Q. You didn't talk to him?

A. I didn't talk to Mr. Sexton.

Q. And you did not on two occasions ask Mr. Sexton to do picket duty?

A. I did not.

Q. Mr. Sexton's statement was untrue when he was on the stand and said that, was it?

A. Yes, sir, it certainly was untrue. I told Mr. Sexton at no time—I don't even converse with Mr. Sexton, never have.

Q. You won't speak to him?

A. Yes, sir, I speak to anyone that speaks to me.

Q. What do you weigh?

A. I weigh 228 pounds.

Q. You are in good health, aren't you?

A. Yes, sir.

Q. You have kind of got a reputation of being a man who kind of takes care of himself?

A. Not with a bum hand, no, sir.

Q. Have you got a bum hand?

A. I absolutely have. If you would care to see it I would be very glad to show it to you. This hand is wired together.

Q. That's not your right hand, is it?

A. No, sir, its not.

Q. Do you know Mr. C. L. Hobson?

A. I do.

Q. Did you have any conversation with Mr. Hobson about picketing?

A. About picketing?

Q. About anything of the kind?

A. No, sir.

Q. During the strike?

A. No, sir, absolutely not.

Q. Did you tell Mr. Hobson, or did you tell anybody else that the Brotherhood had told you to get pickets together, but to make yourself scarce around there?

A. That's a figment of somebody's imagination. I certainly did not.

Q. You didn't tell anybody that?

A. No, sir.

Q. Did you around 10:00 p. m. on that Sunday night, when things were just moving off, about an hour after—I believe you said you got down to Rex's Barbecue at 8:45 that night?

A. In that vicinity, yes, sir.

Q. When you got down there?

A. About that, yes, sir.

Q. You say you got back from Elmore around, and got down to Rex's around 8:45, just before 9:00 o'clock?

A. I said in the vicinity of that time, yes, sir.

Q. I know you did, you didn't say you got there exactly, I understand, but it was substantially your recollection?

A. To the best of my knowledge, yes, sir.

Q. That was just before the deadline started, just before the 9:00 o'clock deadline for the walkout?

A. I don't even know when the deadline occurred, Mr. Simpson.

Q. All right. Didn't you there around Rex's Barbecue, between 9:00 o'clock and 10:00 o'clock p. m. say in the presence of Mr. Chapman and others

"We've got to get this picket line organized, and get it started. Let's go"?

A. No, sir, I did not.

Q. You saw Mr. Chapman here?

A. I saw Mr. Chapman here, know him well.

Q. Didn't you tell people that you posted as pickets around at the various entrances to tell the folks that the firemen were on strike, and not to go in that Yard?

A. I didn't post any pickets, Mr. Simpson.

Q. All right. Do you know Mr. Chapman?

A. I do know Mr. Chapman.

Q. Did you hear him testify up here?

A. Yes, sir.

Q. All right. Now then, Mr. Anderson assisted you, didn't he?

A. I beg your pardon?

Q. Did Mr. Anderson assist you in this business of getting the pickets?

A. If he did I was asleep, because I don't know anything about anybody assisting me in anything.

Q. I see. Now as that strike moved on, I believe they had a meeting on Tuesday at Ed Weldon's house, didn't they?

A. I couldn't tell you who had a meeting at Ed Weldon's house.

Q. You mean to say that you were not at Mr. Weldon's house on Tuesday?

A. Not that I recall, no, sir.

Q. Now do you mind answering my question?

A. That is eleven months ago. I don't remember whether I was there or not.

Q. Do you know where Mr. Ed Weldon lives?

A. I have been there one time, and I don't know his house number, no, sir.

Q. I don't mean his house number.

A. No, sir.

Q. He is a brother of Mr. J. M. Weldon, one of the Defendants in this case. isn't he?

A. Yes, sir, I know he is a brother of Mr. Weldon.

Q. Do you recall having been at his house on one occasion?

A. Mr. Weldon could have moved for all I know because I went to his house,—it has been 6 or 7 years ago.

Q. I mean his home, in the sense you know that we call our—sometimes we speak of our home as being our house. You probably used the wrong word. You have been in Mr. Weldon's home, wherever it was located?

A. One time as I remember, yes, sir.

Q. When was that?

A. Oh, that has been 5 or 6 or 7 years ago, to the best of my knowledge now.

Q. You remember that very well?

A. Well, yes, because I had a tree cut down in my front yard, and I borrowed two steel wedges from him.

Q. Now that is 6 or 7 years ago?

A. Well, in the neighborhood of 5 to 7 years ago, yes, sir.

Q. I am asking you if you were in Mr. Weldon's home about a year ago, a little less than a year ago, that is on October 25, 1955?

A. Now I don't remember whether I was or not.

Q. You don't remember?

A. No, sir.

Q. You won't tell this jury you were not there, will you?

A. If I was there I certainly wouldn't be afraid to tell them.

Q. Well, I am sure you would not.

A. No, sir.

Q. But you do remember being in his home 6 or 7 years ago, but you can't remember about a year ago?

A. I recall this instance because we had a windstorm and it nearly blowed a tree down on the house, and we had to get outside that night. My family will verify it.

Q. You also recall you had a strike here last October too, don't you?

A. I do.

Q. That's about as important as the windstorm, isn't it?

A. Well, I didn't participate in it in any way.

Q. About as dangerous as a windstorm too, isn't it?

A. It wasn't dangerous, no, sir, no, sir.

Q. I want to get the record straight. You do not tell us that you did not go to Mr. Weldon's house on Tuesday, October 25?

A. Now repeat that question again.

Q. Well, will you tell us that you were or were not at Mr. Ed Weldon's home on the afternoon of Tuesday, October 25, 1955?

A. Now, I don't recall being there, no, sir.

Q. You won't say you were not there?

A. I'll say I wasn't there before I will say I was, because I don't recall of being there.

Q. I didn't ask you that. Well, I think you have made yourself plain, I'll not push it any further.

You know Mr. Alfred Walker, don't you?

A. Yes, sir, I do, a mighty good man.

Q. Don't you remember seeing Mr. Walker out there at Ed Weldon's house that afternoon? Mr. Walker is an engineer, isn't he?

A. Yes, sir, he is an engineer.

Q. He is a tall slender man?

A. Yes, sir, smokes a big black cigar, I remember him.

Q. A fine looking man?

A. Yes, sir.

Q. He is a good man?

A. Yes, sir.

Q. Do you tell the jury you were not up there with Mr. Alfred Walker?

A. Not that I know of.

Q. Didn't you at that meeting say "Gentlemen, let's get these pickets organized, and get them on the job"?

A. No, sir.

Q. You did not?

A. I did not.

Q. Do you know Irvin Rich?

A. Oh, yes, I know Mr. Rich.

Q. You heard him testify here?

A. I did, the man with a crew cut.

Q. You heard him testify here the other day, didn't you?

A. I did.

Q. Did you ask Mr. Rich on October 25, that would be Tuesday, to do picket duty, that some of the switchmen were trying to go to work, and you wanted him to come down there and get on the gate?

A. No, sir, I did not.

Q. And further tell him, when Mr. Rich asked you something about what you were going to do, didn't

you tell Mr. Rich that the Brotherhood had told you personally to stay away from picketing?

A. I didn't tell Mr. Rich, period, nothing.

Q. You heard Mr. Rich testify?

A. I heard Mr. Rich testify.

Q. What he said then wasn't true?

A. Yes, sir, because the last man that Rich talked to, that's the man that's it.

Q. All right. Mr. Rich has told a falsehood then—well, I won't put it that way. What Mr. Rich testified to there on the witness stand wasn't true?

A. It was not true, not a word of it.

Q. Not a word of it?

A. No, sir.

Q. Now, you know Dewey Cavins, don't you?

A. Yes, sir, I do.

Q. Did you see him, Dewey Cavins, on Monday, the 24th, did you ask Dewey Cavins to line up for picket duty?

A. No, sir.

Q. Did you have any conversation with Dewey Cavins of any kind?

A. I don't remember seeing Dewey Cavins during this walkout.

Q. Did you talk to him by telephone?

A. I stayed at home most of the time.

Q. That's exactly the point, you stayed at home and called these people, didn't you?

A. No, sir, I didn't.

Q. Didn't you call Mr. Cavins either on the 24th or 25th?

A. No, sir, I did not.

Q. And ask him to get on the picket line?

A. No, sir, I did not. I was ready to go to work when they called me, that's why I stayed at home,

I was on the board. I never did lay off. Sometimes the L&N Railroad will discipline you if you lose a call. Lots of times they will call an investigation and give you days against your record, and when you accumulate a certain amount of days they will fire you for it. I don't miss calls.

Q. Are you through? Now, you know Mr. Saylor, don't you?

A. Yes, sir.

Q. You have already told your attorney what Mr. Saylor said here wasn't true?

A. I didn't say it wasn't true. Mr. Saylor called me.

Q. Well, regardless of who called the other, did you ask Mr. Saylor to do picket duty?

A. No, sir, I did not. I told him it was his privilege to go down there and sit around if he wanted to.

Q. Did you actually put Saylor on picket duty around 7:30 p. m. on the 26th at Vanderbilt Road?

A. I didn't put anyone on picket duty. There was no pickets, so far as I know.

Q. Did you come the night of this strike, when the strike was over, and relieve Mr. Saylor and tell him the strike was over, he could go on home?

A. When I came from town with my family, my daughters were present, I heard downtown, somebody passed me and said "Ocie, the strike's over, go home." I don't know who it was. They drove on by me.

Q. So somebody downtown told you to go home because the strike was over?

A. On First Avenue, yes, sir, lots of people downtown on First Avenue.

Q. Somebody just walked up to you and says—

A. They didn't walk up to me, they drove past me.

Q. They drove past you and hollered at you?

A. Absolutely so.

Q. So you drove out there then and relieved Mr. Saylor as a picket?

A. I went out 12th Avenue, and as I was going out 12th Avenue, the Vanderbilt Road, I had to pass right by Mr. Saylor. I told him "Let's go to Rex's, I hear the strike is over." He drove out behind me, and went to Rex's.

Q. What was Mr. Saylor doing?

A. Mr. Saylor was sitting off the Company property in his truck.

Q. Just off the Company's property?

A. Absolutely.

Q. At which entrance?

A. What they call the Hillside entrance, the Wood Yard there.

Q. That's where you stayed from 8:00 o'clock to 11:00 o'clock on the first day of the strike, wasn't it?

A. I was sitting in the vicinity of that, yes, sir.

Q. You set your car there, and you sat around the side of your car there at that entrance for 4 hours the first day of the strike, didn't you?

A. When I got there there was already a crowd of men there.

Q. That's the last actual picketing or standing around you personally did, wasn't it?

A. I didn't do any picketing, Mr. Simpson.

Q. I won't argue with you about what that was. But whatever you were doing there, standing there 4 hours by your car, that's the last time you did anything like that?

A. To the best of my knowledge, yes, sir.

Q. To the best of your recollection, yes?

A. Yes, sir.

Q. Now then, getting back to Mr. Saylor again, after this mysterious man hollered at you down here on First Avenue to go home, and you had your family with you, you drove out there and you saw Mr. Saylor out there at the very same entrance where you had spent those 4 hours, didn't you?

A. Yes, sir, he was sitting around there.

Q. Sitting around?

A. Yes, sir. I had to go right by him. The City has built us a road, they call it a street, Vanderbilt Road right around it, it turns one way and went, and then went the other, and turned to the right again.

Q. You told Mr. Saylor "Well, its settled, you can go on home", didn't you?

A. I didn't tell him it was settled, I told him I heard the strike was over, "Let's go to Rex's and see about it."

Q. As soon as you told Mr. Saylor that, he just ups and drives off?

A. I figured he would, I didn't know that he would. He's 21 years old, and could do as he pleases.

Q. You had put him there, and you turned him loose?

A. I didn't put him there, Mr. Simpson.

Q. All right. You know Mr. D. W. Morgan, don't you?

A. Yes, sir, I do.

Q. Did you ask Mr. Morgan, and actually assign Mr. Morgan to picket duty?

A. I did not.

Q. Mr. Morgan is a fireman, is that right?

A. Yes, sir, he is.

Q. Do you know where Mr. Morgan just happened to be standing around some time during that strike?

A. I didn't see Mr. Morgan as I remember during that strike anywhere, Mr. Simpson.

Q. You tell us that you did't put Mr. Morgan on picket duty?

A. I tell you that I did not.

Q. Do you know Joe Saab?

A. Yes, sir, I do.

Q. Did you call Joe Saab during that strike?

A. No, sir.

Q. Did you call Joe Saab and ask him during the strike if he had been keeping on the job down at the L&N station here?

A. Repeat the question, please.

Q. Did you call Joe Saab and ask him if he had been keeping on his post down here around the L&N station?

A. No, sir.

Q. Passenger Station?

A. I did not.

Q. You did not?

A. No, sir.

Q. Joe Saab is a fireman, isn't he?

A. Yes, sir, and an engineer too.

Q. He had been promoted?

A. And a hostler.

Q. Did you call Sutterlin, one of the Defendants over here, and ask him to do picket duty?

A. I did not.

Q. Did you call anybody besides the eleven men I have mentioned, did you call anybody and ask them to do picket duty?

A. Not to my knowledge, no, sir.

Q. You just—if you did, you have forgotten it?

A. I didn't forget it, no, sir. I said I didn't call them to my knowledge.

Q. Yes, sir. All right.

A. I pay my telephone bill. I understand they allow me to call anyone I want to.

Q. I think you are right about that. Didn't you tell Sexton at the time you were asking him to do picket duty that you had credentials authorizing you to post pickets?

A. I did not, no, sir.

Q. You heard Mr. Sexton testify to that?

A. I heard Mr. Sexton.

Q. That was not true.

A. Mr. Sexton is seniority hungry.

Q. I heard you say that he was seniority hungry.

A. No, you did not. This is the first time you heard me say that.

Q. I heard your lawyer say that.

A. Well, then.

Q. Is that the only criticism that you can make of Mr. Sexton, that he is seniority hungry?

A. Well, Mr. Sexton, when you are hostling with him, he likes to do the bossing, tell you what engine to get out.

Q. Mr. Sexton is a pretty good man, isn't he?

A. I couldn't say anything about him except that he doesn't have a personality that I like, no, sir.

Q. You just don't like him? You don't like the fact that he told this jury here that you—

A. Mr. Sexton is very overbearing.

Q. Very overbearing?

A. Yes, sir.

Mr. Pettus:

We object to any further discussion about Mr. Sexton.

The Court:
I sustain the objection.

Q. Have you ever heard anybody say that Sexton was a liar before?
A. Repeat your question, please.
Q. Have you ever heard anybody say Mr. Sexton was a liar before?
A. Several, around.
Q. Who is it that said Mr. Sexton is a liar?
A. The general discussion.

Mr. Pettus:
We object to that.

The Court:
I sustain the objection.

Q. Just general discussion?
A. Yes, sir.
Q. Do you know Mr. W. T. Owens?
A. Yes, sir, I do.
Q. Well, you heard Mr. Chapman testify, didn't you, in this case?
A. Yes, sir.
Q. I will ask you, did you assign Mr. Chapman and Mr. Owens to picket duty together?
A. Well, I have already told you three or four times I didn't assign anyone to picket duty, not a living solitary soul.

Mr. Simpson:
All right, you can come down, please, sir.

The Court:
Come down, Mr. Breedlove.

(Witness excused.)

Mr. Pettus:
Mr. Letchman.

R. H. LETCHMAN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your initials and spell your last name so the Reporter can get it down correctly?

A. R. H. Letchman, L-e-t-c-h-m-a-n.

Q. You are a fireman for the L&N Railroad, is that correct?

A. That's right.

Q. And you were so employed by in October, 1955?

A. That's right.

Q. Do you belong to a Brotherhood out there?

A. Yes, sir, Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you belong to that organization in October, of '55?

A. That's right, sir.

Q. Mr. Letchman, of course, you have been in here and heard this discussion about this work stoppage?

A. Yes, sir, that's right.

Q. You recall that, don't you?

A. Yes, sir.

Q. You are a Defendant in this lawsuit, aren't you?

A. That's right.

Q. During that three day work stoppage did you receive any pay from the L&N Railroad?

A. I did not.

Q. What was your rate of pay?

A. Right around $15.00, something like that, a little better.

Q. Per day.

A. That is per day.

Q. Yes, sir. You recall, do you not, that the work stoppage occurred on Sunday, October 23, at night?

A. Yes, sir.

Q. When was the last time you worked before the work stoppage occurred?

A. That day. I got off at 3:55 that afternoon.

Q. You got off at 3:55 Sunday afternoon?

A. That's right.

Q. The 23rd of October?

A. That's right.

Q. Were you working on a regular shift at that time?

A. No, on the Extra Board.

Q. When you left there Sunday afternoon did you have any regular assignment to report back to work?

A. No, just whenever they called me.

Q. You were not supposed to come back until the Engine Dispatcher called you, is that correct?

A. That's right.

Q. All right, sir. On Sunday afternoon, or by that time, had you heard—or first I will ask you did you have any knowledge of the Railroad's intention to abolish the outside hostler helpers?

A. Oh, yes, I heard about it, saw a bulletin out there about it.

Q. Did you hear discussion about the Railroad's proposal?

A. About what?

Q. Around the Yard?

A. About what?

Q. Did you hear discussion about what the Railroad intended to do about abolishing those jobs?

A. Yes, sir, I heard it.

Q. Was that more or less general?

A. Yes, sir, just general discussion, you could hear it around most any place.

Q. Now, you have been identified by several witnesses as having attended a meeting at Mr. Parker's home?

A. Yes, sir.

Q. Were you there?

A. That's right, I was there.

Q. When did you first hear about the meeting?

A. I think that Sunday morning, or either Saturday, the day before that. I won't be positive now, but I believe it was Sunday morning.

Q. You did not attend a Union meeting Friday night?

A. Oh, no.

Q. And you were not in any small group on the street outside of the Union meeting, is that correct?

A. No, I was not there.

Q. Do you recall who told you about the meeting at Mr. Parker's, or where you were when you heard it?

A. You mean at Mr. Parker's house?

Q. Yes, when you first heard about the meeting, where were you?

A. Oh, I don't know, I heard some fellows in the washroom or somewhere down there talking about it.

Q. All right, how did you get to Mr. Parker's meeting?

A. In my car.

Q. How did you get to his house?

A. I went in my car.

Q. Did you take anybody with you?

A. No, sir.

Q. Did you leave the Boyles Shop to go to Mr. Parker's home?

A. No, I went across the street there and was sitting in the cafe, and I was invited to go down there.

Q. All right.

A. Now, that was after I got off from work Sunday afternoon.

Q. About what time did you arrive at Mr. Parker's house?

A. I guess around 4:30.

Q. I won't ask you the list of names of people that were there, you have heard the testimony about it?

A. Yes, sir.

Q. Do you have any other names that you want to add to the list?

A. No, more or less, just the same bunch that has been identified.

Q. Did you know everybody that was there?

A. Well, mostly all the fellows. It seems like there was one or two fellows there I didn't know. That conductor that was up here, I believe he was there, but I'm not personally acquainted with him. It seems like there was another man there, I don't know who he was.

Q. Now, what did you hear discussed at the meeting?

A. Well, they just—for a while there wasn't anything but just a bunch of them discussing things. Then somebody got up, I believe it was Mr. Reese Thomas, and said something to the effect "We are here to discuss ways and means", or something to that effect, "About trying to get these hostler helpers jobs restored."

And somebody suggested, "Well, suppose we have the Local Chairman or somebody take it up with the Master Mechanic, or take it up with Mr. Kirchner." And I believe Otts said he had already discussed it with Mister—with the Master Mechanic, and he stated it was up above him. And that's what was discussed, that's what I heard.

Q. Mr. Letchman, before I forget it, what Seniority Division were you on on October 23, 1955?

A. Birmingham Mineral.

Q. Were other people there on the Birmingham Mineral Seniority Division?

A. No, I believe I was the only one off of the Birmingham Mineral that was there.

Q. All of the rest of them were on some other Division?

A. Main line, or the O&A, or Alabama Mineral we call it.

Q. Was Mr. T. A. Kennedy at the meeting?

A. Yes, sir, he was there.

Q. Do you recall him talking any?

A. No, I don't remember him saying anything, unless he may have spoke to the fellows, or he may have said something to them, but I didn't hear him say anything.

Q. How long did you stay at the meeting?

A. After they got in there, I guess about 10 or 12 minutes, maybe 15.

Q. You say you left after about 10 or 12 minutes?

A. Yes, sir.

Q. Was the crowd still there when you left?

A. Yes, sir.

Q. Were you the first or among the first to leave so far as you know?

A. Well, I believe I was the first one, I don't know. I didn't see anybody else leave, but I believe I was the first one that left there.

Q. You don't have any recollection of whether Kennedy was there or had gone when you left?

A. I believe he was still in there; I am pretty sure he was.

Q. Did you yourself have anything to say at the meeting?

A. No.

Q. Where did you go when you left the meeting?

A. Went home.

Q. Do you have any judgment as to about the time you got there?

A. When I got home, I guess around 10 minutes after 5:00, something like that, maybe a little later, I don't remember.

Q. Did you stay home that evening?

A. Yes, sir.

Q. When was the next time you went down in the vicinity of the Boyles Yard?

A. About 9:45, somewhere, that night.

Q. That was Sunday night?

A. Yes, sir.

Q. Where did you go?

A. Well, I just went to this place—to begin with, the reason I went down there, I asked this Engine Dispatcher that afternoon—I came in first out on the board, and I asked him "Am I going to get to work my run?" He said "Yes, sir, don't you leave, you'll get out for a positive fact, I can promise you, tonight." He says "If I don't use you on the road I'll use you in the Yard." I said "Well, I would like to catch another Yard engine because I get time and a half for it." He said "Well, you stay around the telephone."

And in order for me to get out on my rest it would have been about 11:55, because I had got off at 3:55.

So about 9:15, somewhere along there, I decided I would call him to find out whether I was going to get out on the road or in the Yard, so I would know what to do. So I called him about 9:15, something like that, maybe 9:10, and nobody answered the phone. Well, I said "He's across the street getting some coffee or something", which they do a lot of times.

Well, I waited about five minutes longer, and nobody answered again. I tried to call again, and I waited then about 10 or 15 minutes later and I tried to call again. Nobody answered. I said "Well, I'll go down there because he has done promised me I'm going to get out tonight for a positive fact."

Q. You are telling us you called the Engine Dispatcher's Office on two or three or four occasions Sunday night?

A. Three occasions, I believe.

Q. And no one answered that telephone?

A. That's right.

Q. Was that normal or unusual?

A. Well, its normal and unusual. After three times. But sometimes they are across the street, the Engine Dispatcher is.

Q. All right, how about three times, is that normal?

A. Well, I never thought anything about it. It has happened.

Q. What did you see when you got down there in the vicinity of the Boyles Yard?

A. Well, I just rolled up there at the cafe, Rex's Grill, and I saw a crowd of men around there, and I got out of the car, parked the car and went over there, and I heard some one there talking about as "Dead as a hammer", or something like that over there. And I asked somebody, I says "What's the matter", and they said "They got labor trouble," and I went into the cafe then and tried to call the Engine Dispatcher. I couldn't get him.

Then I heard some of them say he was out. Then I tried to call Mr. Otts and nobody answered that phone. I started to call Mr. DuBose, L. A. DuBose.

Q. Is he your Local Chairman?

A. He is my Local Chairman on my Division. And I happened to think he's out on the run because I saw him going out that afternoon, and I knew he wasn't going to get back before 12:00 or 1:00 o'clock, or I figured that. He went on the Bessemer turn.

Q. Who are some of the people that you saw down there at Rex's, do you have any recollection, do you remember any names?

A. I remember most of them, Tubby Eubanks. I don't remember right now who all was there. Red Fleming, and I think I saw Shorty Parker. There was a bunch of them around there. I knew most all of them.

Q. Was there any activity going on over in the Yard?

A. Not that I could see.

Q. Were there any lights on?

A. I don't remember. It seems like there was a few over there right at the washroom, over there.

Q. How long did you stay down there at Rex's that Sunday night?

A. I guess until about 1:00 or 2:00 o'clock.

Q. What did you do then?

A. I went home.

Q. When was the next time you went about the Railroad premises?

A. Well, I got up about 8:00 or 9:00 o'clock, ate breakfast, and then went back down to the Rex's Grill.

Q. This was Monday morning we are talking about now?

A. Yes, sir.

Q. Did you have occasion that Monday morning to be in the vicinity of any of the gates of the Boyles Yard?

A. Yes, I stayed around there a while, I reckon until about 11:00 o'clock, and then I drove up the road. And I happened to see two or three cars there by the Master Mechanic's Office, and I just drove over there. I got out, and sat in the car.

Q. Was there anybody with you?

A. No, I was by myself.

Q. Who did you see up there?

A. I saw a fellow named Hawkins, fireman on the main line, and then there was several other fellows around there, but I don't know, I never paid any attention.

Q. Was there another car parked there then?

A. I think there was another car or two there, over on this other road that comes in there.

Q. How far was your car away from any other automobile that you saw on this occasion there?

A. Just like—well, this car of Hawkins was parked about 40 feet back over from the gate, something like that, and I just stopped right over there kind of in that direction. I guess I was about 25 or 30 feet from him, 25 feet.

Q. Did you see Mr. Ben Mitchell that day?

A. I sure did.

Q. Did you have any conversation with Mr. Mitchell?

A. No, nothing more than when he came out of the Yard there I asked him—he had went in there to see about getting some cars, or checking some cars for stock or something, and I asked him did he find those cars, and he said "Yes, thank you."

Q. Did you see Mr. Reese Thomas out there that day?

A. I did.

Q. Did you have any conversation in which Mr. Mitchell and Mr. Thomas also participated?

A. No, sir.

Q. Did the three of you have any conference together?

A. No, sir, I did not.

Q. Did you see Mr. Mitchell talking to Mr. Thomas?

A. Yes, sir, I saw him.

Q. Were you close to them when they had that conversation?

A. I guess about 40 feet, something like that.

Q. 40 feet?

A. Something like that.

Q. You didn't hear what they were discussing?

A. The only thing I could hear, I heard the word "cars", or something, some livestock, and I heard Reese tell him "Well, if you want me to go in there and help you find the cars, I'll help you", or something to that effect, and he went on in there.

Q. Were you there when Mr. Mitchell went into the Yard?

A. Yes, I was sitting in the car with this fellow.

Q. Did you call over there and ask what he wanted?

A. Well, after he went in the Yard I hollered out there to Reese, I said "What did Ben Mitchell allow", and he said he wanted to go in there, or was going in there to see about some livestock or something. I said "What did you tell him?" And he said "I offered to go in there and help him."

Q. You have already testified you were there when Mr. Mitchell came out?

A. Yes, sir.

Q. Did you have any discussion with Mr. Mitchell when he came out?

A. Nothing more than I hollered out "Did you find those cars in there?" He had some bills in his hand, and he said "Yes, thank you", or something like that.

Q. All right, when did you leave that gate?

A. Oh, after about 10 minutes, something like that.

Q. Where did you go then?

A. On down to the Rex's Grill.

Q. Did you go around any of the Railroad premises any more on Monday?

A. No, sir.

Q. What did you do on Monday night?

A. Well, that afternoon—I mean I stayed around there a while, and then I went home and ate dinner. And then I came back about 3:00 or 4:00 o'clock, somewhere, stayed around Rex's Grill there.

Q. Did you go around the entrance to the L&N Railroad Monday afternoon at all?

A. No, I don't believe I did.

Q. You did not?

A. I was right there at Rex's Grill with the crowd.

Q. What time did you go home Monday?

A. I guess about 12:00 o'clock, somewhere along there, I don't remember.

Q. Did you spend that night, Monday night, at home?

A. Yes, sir.

Mr. Simpson:

We object to leading him continuously.

The Court:

Sustained.

Q. Where did you go Tuesday, if you went anywhere?

A. I got up in the morning and came back down to Rex's Grill.

Q. Did you go around any entrances to the Boyles Yard on Tuesday?

A. No, I don't believe I did. I was right at Rex's Grill, hanging around there.

Q. Did you see any work going on in the Yard?

A. No.

Q. What did you do Tuesday night?

A. I stayed around there, went home first and ate dinner, then come back down that afternoon and stayed around. I don't remember what time it was that night, and then went home.

Q. When did you go to work the first time after this work stoppage was over?

A. Thursday morning.

Q. When did you learn that the work stoppage was over?

A. Wednesday afternoon late, about dark.

Q. How did you learn?

A. Well, I say I learned it. There was a fellow named Hermey Roy came down and said "Everybody's going to work, it's all over." And in a little while I saw a bunch of them ganging up down at that bridge down there where they go across to the roundhouse. You could hear them all saying "Well, we're going in there in a few minutes." They were fixing to go in there then. Mr. Mulvaney and I think this fellow Camp came down there, Special Agent, says "You all go on in."

In the meantime there were some fellows came out of the Yard with guns on them, two of them I saw with guns.

Q. Did you know who those fellows were?

A. I don't know, I never seen them. I heard them say they were thugs, that's what the men called them.

Q. Were they L&N employees?

A. That's what the men said, they was thugs, I don't know. Then there were two other men in the inside of the Yard where a boxcar was sitting there. We started, some of us started to go in there, but they said "Don't go in there yet", they said "You'll get shot." There was two of them that finally came out and left, and they had guns.

Q. Had you ever seen those two men before?

A. No, I never seen them, at least I don't believe I had. It was dark out there.

Q. Did you go in with the group at that time?

A. Yes, one of the first ones to get in.

Q. When did you go to work?

A. They called me out Thursday morning to go to work.

Q. Did Mr. Camp say anything to you about who those men that were in the Yard were with guns?

A. I never heard him say. He didn't say anything to me, and I didn't say anything to him.

Q. You didn't hear him say anything about that they were detectives, hired by Mr. Bodeker?

A. No, sir, I didn't hear him say who they were, nothing more than just what those men said out there, they said they were thugs.

Q. All right, now, Mr. Letchman, at the gathering at Mr. Parker's house did you tell anybody to threaten any L&N employee that wanted to go to work?

A. No, sir, I did not.

Q. Or to use force on any employee that wanted to go to work?

A. No, sir.

Q. Did anybody tell you to threaten any employee of the L&N Railroad?

A. No, did not.

Q. Or to use any force?

A. They did not.

Q. During these three days, approximately three days that this work stoppage lasted, did you threaten any L&N employee?

A. I did not.

Q. Did you forcibly prevent any L&N employee from going to work?

A. I did not.

Q. Did you tell any L&N employee not to go to work?

A. I did not.

Q. Did you instruct any other person to prevent any L&N employee from going to work?

A. I did not.

Mr. Taylor:

That's all, Mr. Letchman. Answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. Mr. Letchman, who was it that asked you to go to the meeting on that Sunday afternoon?

A. Mr. McCutcheon invited me, and asked me. I asked him what kind of meeting it was, and he told me, and I said "All right, I'll go."

Q. Up to that time you hadn't known anything about the meeting at Mr. Parker's house?

A. Yes, sir, I heard something I think Sunday morning about it. I believe it was Sunday morning.

Q. Mr. McCutcheon invited you to go and you went?

A. Yes, sir.

Q. By yourself?

A. Yes, sir.

Q. You got over there and I believe you told us then that Mr. Otts got up, Mr. Otts was your Local Chairman, the Local Chairman of the main line Division?

A. Yes, sir.

Q. Mr. Otts got up and said what?

A. Well, he said that he had taken it up, had already taken it up, I believe it was he said with Mr. Quiggins, and Mr. Quiggins told him it was above him, or above his head, or something to that effect.

Q. Don't you remember that Mr. Otts said that he had taken it up with Mr. Quiggins, and he was not going to take it up with another damned L&N official?

A. No, I never heard him say that.

Q. You heard the witnesses here on the stand say that he said that?

A. Yes, I understand, I heard the witnesses say that, but you asked me whether I heard him say that.

Q. You were right there in the meeting?

A. Yes, sir.

Q. Where this other gentleman was?

A. Yes, sir.

Q. You don't say he didn't say it, you just say you didn't hear him say it?

A. I didn't say that he didn't say it, but I didn't hear him say it.

Q. All right. Now then, you told us also that Mr. Reese Thomas made a statement at the meeting?

A. Yes, sir.

Q. What did he say?

A. He got up and said something to the effect that "We are here to discuss ways to get these hostler helpers jobs back that they have abolished", or was abolishing, or something to that effect.

Q. Did Mr. Thomas tell you anything about having those picket signs in his car outside?

A. No, sir, he never told me anything about any picket signs.

Q. Did you see them?

A. No, sir, I didn't see them.

Q. Mr. Thomas didn't say a word to you about it?

A. No, sir.

Q. Now, you stayed there about how long at the meeting?

A. You mean how long did I stay?

Q. Yes, sir.

A. I guess about, after it got started there, about 10 or 12 minutes, something like that, it might have been 15.

Q. During that time the meeting had reached a conclusion about what was going to be done though?

A. Yes, sir, that's what I understood.

Q. That was to call a strike that night at 9:00 o'clock, wasn't it?

A. I don't know, they never said anything about a strike. There was nothing mentioned, or walkout, or anything else that I heard of.

Q. But you were in agreement about what you were going to do, weren't you, when you left there?

A. They was in agreement about what they were going to do, yes, sir, about taking it up with the proper channels.

Q. Didn't you tell us that Mr. Otts said he had already taken it up with Mr. Quiggins?

A. That's absolutely right.

Q. You didn't hear him say he wasn't going to take it up with another damned L&N official?

A. No, sir, I didn't hear him say that.

Q. You didn't hear that?

A. No, sir.

Q. Didn't you say when you left there that you understood that they had reached an agreement, that you were going to just take it up through regular channels?

A. Take it up, and turn it over to Mr. Paschal.

Q. Don't you know that you heard Mr. Kennedy advocate that?

A. No, sir, I didn't hear Mr. Kennedy say anything.

Q. You didn't hear Mr. Kennedy get up and say he talked to Jake Paschal that afternoon?

A. No, sir, I never heard him say that, if he said it, he said it after I left there.

Q. And that Paschal had told him to come to the meeting and tell these men under no circumstances to strike?

A. I didn't hear him say that.

Q. That the Union couldn't support them?

A. I didn't hear him say that.

Q. You didn't?

A. No, sir.

Q. That it would be an illegal strike?

A. No, sir.

Q. You didn't?

A. No, I didn't hear him say that.

Q. Didn't you hear them tell Mr. Kennedy and Mr. Logan and Mr. Vann if they couldn't picket and support the strike that they ought to leave the meeting?

A. No, sir, I didn't hear anybody say that.

Q. Who was the first man that left that meeting?

A. I believe I was.

Q. You mean you left there before Kennedy, Logan and Vann?

A. I'm pretty sure I did.

Q. And before Sutterlin?

A. Yes, sir, I believe I did.

Q. You believe you did?

A. Yes, sir, I could almost swear to that.

Q. Now at the time you left, the thing had been decided, whatever it was, they had decided to do, it was already decided before you left, hadn't they?

A. So far as I was concerned, they had.

Q. I will ask you if you were asked these questions, and did you make these answers in your deposition taken on May 3, 1956. Page 50, Mr. Taylor, towards the bottom of the page:

"Q. How many men were still in the Parkger garage when you left?

"A. I don't remember. There was a pretty good crowd in there. I might not have been the first one to leave, I don't remember.

"Q. What is your judgment about the total number of men that were there when you went there?

"A. When I first went in?

"Q. When the meeting started?

"A. I would say 20 men or something like that.

"Q. Give us your best judgment about the number that was still there when you left.

"A. I think the biggest part of them were there.

"Q. Practically all of them, weren't they?

"A. Yes, sir.

"Q. Were they in general agreement or were they in disagreement?

"A. So far as I could see they were in agreement, so far as I could detect, they were all in agreement.

"Q. You didn't hear any disagreement by anybody?

"A. No, sir.

"Q. While you were there at that time?

"A. No, sir.

"Q. Were they in agreement about what was to be done about the hostler helpers jobs, as well as you remember? They were in agreement, weren't they?

"A. Yes, sir."

A. That's right.

Q. Were you asked those questions and did you make those answers?

A. Yes, sir, I believe I did.

Q. After leaving there you showed up at Rex's Barbecue stand that night at what time did you tell us?

A. I reckon about a quarter to 10:00 or something like that, I don't remember.

Q. About 9:30 or 9:45?

A. It was later than 9:30. I would say close to 10:00 o'clock.

Q. When you got down there that night?

A. Yes, sir.

Q. And you stayed there how long?

A. Until about 2:00 o'clock, somewhere along there.

Q. About 2:00 o'clock?

A. Yes, sir.

Q. And you went home then you say and went to bed?

A. That's right.

Q. And got up next morning and came back out there at what time?

A. I guess about 9:30, somewhere along there, I don't remember right now, maybe 10:00 o'clock.

Q. About 9:30 or 10:00 o'clock?

A. Down at Rex's Grill there.

Q. You stayed around Rex's for a little while?

A. A pretty good little while, I don't remember exactly.

Q. Then you got in your car and drove up to the Master Mechanic's gate?

A. Yes, sir, I drove up that way and turned in then, and went in there.

Q. The big crowd was at Rex's?

A. Yes, sir, that's where the biggest part of the crowd was all the time.

Q. The Master Mechanic's gate is about how far from Rex's?

A. I would say about three or four blocks, city blocks.

Q. It is about how far off, away from the Pinson Pike?

A. Oh, I guess about a block.

Q. It is a pretty long block, isn't it?

A. Well, it may be, it may be a block and a half, I don't know.

Q. There are two roads or streets—

A. Yes, sir.

Q. —that converge out there at that gate?

A. Yes, sir.

Q. Both of them come off of Pinson Pike?

A. That's right.

Q. And you were just coasting around and decided you would drive over there?

A. Well, I started up the road and I saw a car or two down there, and I said I believe I would go down to see what the news is.

Q. Had anybody asked you to go over there and relieve somebody on picket duty at that time?

A. No, sir, nobody hadn't asked me.

Q. When you got over there who did you find there?

A. Well, that fellow Hawkins was sitting in his car, and there were two or three other cars there, or one or two, I don't remember now, and I don't know who was in that car.

Q. Who was Mr. Hawkins?

A. He is a fireman.

Q. He is a fireman?

A. Yes, sir.

Q. He was sitting there in his car at that gate?

A. Yes, sir.

Q. And there was another man in the car with him?

A. No, there wasn't any other man in the car with him.

Q. Where was the other man?

A. I don't know, I saw another man or two in another car sitting there.

Q. Mr. Hawkins was just sitting there, kind of looking at the gate, wasn't he?

A. No, he wasn't looking at the gate, he was facing me.

Q. How far was he from the gate?

A. I guess about 30 feet, or maybe 40.

Q. About 30 feet?

A. Maybe 40.

Q. There couldn't anybody have gone in that gate without his seeing them, could they?

A. I'm not no judge of that.

Q. You just wouldn't say?

A. No.

Q. But he was about 30 feet away from them?

A. Maybe 40, I don't know.

Q. Maybe 40 feet?

A. 35, something like that.

Q. He wasn't talking to anybody?

A. Well, there was nobody in the car with him.

Q. Nobody in the car with him?

A. That's right.

Q. He wasn't talking to anybody?

A. That's right.

Q. Wasn't doing anything?

A. No, just sitting there in his car.

Q. Just sitting there at that gate?

A. Yes, sir, I think he had his radio on, I believe that's right.

Q. He might have had his radio on?

A. Yes, sir.

Q. Was he whittling?

A. No, sir.

Q. He was one that wasn't whittling. Now, where was this other man that you say was around there?

A. I don't remember, but there was another car parked over on the other side, maybe two of them, just kind of in that direction.

Q. Who was in those cars?

A. I don't know who they were.

Q. Don't you remember Jody Johnson was there?

A. No, I didn't see Jody Johnson there.

Q. Did you see Mr. Davis there?

A. I don't—which Davis are you talking about?

Q. T. E. Davis.

A. No, I don't believe I did.

Q. You didn't see him. You know Johnson?

A. Which Johnson, Jody Johnson?

Q. The younger Jody?

A. Yes, sir, both of them.

Q. And you know Davis?

A. I may know him if I see him, but I don't know him by that name.

Q. Well, the Davis that you know, what is he?

A. Well, I just couldn't place him right off the reel. I know lots of Davises here in town.

Q. I know, but I am talking about the L&N employees.

A. If you show him to me, maybe I will know who he is, but I can't recall him right off.

Q. You can't do that?

A. No, sir.

Q. Now, you saw that car sitting over there with somebody in it on the other side of the gate?

A. Yes, sir—not on the other side of the gate, now let's get that straight. That other slanting road that comes over here, there was one or two cars sitting

over there. This road comes in straight from the east where Hawkins was, and the other car comes in and faces kind of northwest coming in. Now over on the other side, in that road over there, there was one car or possibly two, I don't remember.

Q. Hawkins was sitting in one road where he could watch the gate, and these other cars were where?

A. Sitting back just about straight across north on a direct shot north.

Q. About how far away from the gate, on the other road?

A. Who is that?

Q. The other car.

A. It might have been 40 feet, I don't remember. It may have been a little further. It was just about, one of these cars was just about on a straight shot with the car Hawkins was in.

Q. Was he just sitting there looking at the gate, watching it?

A. I don't know. I didn't see him looking at the gate.

Q. You didn't think that Mr. Hawkins and this other car were on picket duty at that gate?

A. No, sir, I wouldn't consider it a picket.

Q. What?

A. I wouldn't consider it a picket.

Q. You wouldn't just even consider it?

A. No, sir.

Q. You didn't see anybody going in and out of that gate, did you?

A. No, sir.

Q. Now then, you drove up there, nobody had asked you to drive up there?

A. No, sir, going on my own free will.

Q. How long was that before Mr. Mitchell got there?

A. I don't know, I guess maybe 20 minutes, 10 minutes, it could have been, I don't know.

Q. 10 or 20 minutes?

A. Somewhere like that.

Q. You just drove up there?

A. Yes, sir.

Q. Did you go to talking to anybody?

A. I got out of the car, I parked my car and got in the car with Hawkins there, first I stood there and talked to him a few minutes.

Q. Then got in his car?

A. Yes, sir, he has got a new car, I think he said he had a new car.

Q. We are not interested in that, please, sir.

A. All right.

Q. How long did you stay in his car before Mr. Mitchell got there?

A. I don't remember, it wasn't such a great while.

Q. Did anybody come there before Mr. Mitchell got there?

A. Yes, sir, Reese Thomas came down by there.

Q. Who came with Reese Thomas?

A. I don't know. There was somebody in the car with him.

Q. Well, was it Bruce Barnett?

A. Well, I don't remember seeing him, but since then he said he was there, so he probably was.

Q. You know Bruce Barnett?

A. Oh, yes, sir.

Q. And Reese Thomas too?

A. Yes, sir.

Q. They are both firemen, aren't they?

A. Yes, sir.

Q. Which road did they come in?

A. Come in from the east.

Q. The one that turns off of Pinson Pike the furthest away from Birmingham?

A. No, I believe they came in from the one that comes by the Masonic Hall—not by the Masonic Hall either, but from the other one on up there.

Q. The one that is closest to Rex's Barbecue?

A. No, I don't believe they did. I don't—no, because I was sitting on the road that comes out from up on Vanderbilt. Now the other road that comes in from that direction comes in from around towards the Masonic Hall there. They came in on the same road that I was sitting on.

Q. As you go away from Rex's Barbecue going towards Tarrant City?

A. Yes, sir.

Q. You come to two roads that turn off and go to the Master Mechanic's gate?

A. Yes, sir.

Q. Did Thomas come in from the first one of those roads you come to, or the second one?

A. He came in from the south.

Q. Well, which one, the first or second?

A. Repeat that question. Coming from where now?

Q. As you go up to Rex's from towards Tarrant City.

A. Yes, sir.

Q. You come to two roads that turn off to the Master Mechanic's gate?

A. No, not going from Rex's Barbecue from Tarrant City. That's the other side of there.

Q. Can you go from Rex's to Tarrant City on the Pinson Pike?

A. Yes, sir.

Q. As you go along there now you turn off to the left and go to the Master Mechanic's gate?

A. No, I don't think so.

Q. Which way would you turn off?

A. Well, you come back towards Birmingham from Rex's Barbecue.

Q. The Master Mechanic's gate is back towards Birmingham from the Rex's?

A. Yes, sir.

Q. As you come back towards Birmingham from Rex's to the Master Mechanic's gate, you come to two roads that turn off to your right to the gate?

A. That's right.

Q. All right. Now then, did Reese Thomas come in on the first or the second one of those roads?

A. Second one.

Q. The second one of those roads?

A. Yes, sir.

Q. In other words, the one closest to Birmingham?

A. That's right.

Q. All right. Now, Thomas and Barnett, if Barnett was with him—

A. Yes, sir.

Q. And you say you think he was?

A. Yes, sir.

Q. They came rolling up there, and how long had they been there before Mr. Mitchell got there?

A. 5 or 10 minutes.

Q. 5 or 10 minutes?

A. Yes, sir.

Q. They had been there about 5 or 10 minutes, and you had been there about 10 or 20 minutes?

A. I had been there maybe 10 or 15 minutes, 20 minutes, I don't remember now.

Q. They came rolling up?

A. Yes, sir.

Q. Did any of you fellows leave at that time?

A. Leave when they came up there?

Q. Yes, sir.

A. I don't remember. I didn't leave.

Q. Did you say anything about leaving?

A. No, sir.

Q. Did they say anything about you could leave now? Or did any of you relieve Mr. Hawkins?

A. Say I could leave?

Q. Or Mr. Hawkins?

A. I could leave on my own free will and accord. They didn't tell me anything about leaving.

Q. I didn't ask you if you could leave on your own free will and accord. I asked you if anybody said anything to you about any of you that were already there leaving.

A. No, sir.

Q. Now then, when Mr. Mitchell came up who was in the car with him?

A. Well, there was—from what I see now it was Mr. Woelde that was in the car.

Q. I am asking you what you know, please, sir.

A. Well, there was a man with him, and he has been pointed out as Mr. Woelde since then, so he was with him. But I didn't know for sure whether it was Mr. Woelde at that time or not.

Q. Who was driving that car?

A. I believe Mr. Woelde was. Now, I won't be positive, but I believe he was.

Q. They were both officials of the L&N Railroad, weren't they?

A. That's right.

Q. One was Trainmaster I believe, and the other one was Assistant Trainmaster?

A. I think that's the title.

Q. Now did they drive up to this gate and just go on in?

A. No, they got up there and stopped.

Q. Was there any car ahead of them?

A. Reese Thomas' car was right there by it.

Q. Reese Thomas had driven his car up there and parked it so that it blocked that opening down there?

A. Well, so far as a car going in there, it would have blocked it, but anybody could have walked in.

Q. Oh, they could have walked in?

A. Yes, sir.

Q. Ordinarily you drive cars in there?

A. Yes, sir.

Q. Drive around a circle, don't you?

A. That's right.

Q. But you couldn't drive in a car and get by Reese Thomas' car, could you?

A. No, sir, not where it was sitting.

Q. Now then, they got out of their car, or one of them got out of the car, didn't he, that is Mitchell or Woelde?

A. Yes, sir, I believe it was Mitchell that got out, I am pretty sure it was.

Q. Who did he talk to when he got out?

A. I saw him talking to Reese.

Q. He was talking to Reese Thomas?

A. I saw him talking to Reese.

Q. Do you tell us you did or did not hear what he said?

A. Nothing more than to the effect that I heard the words hollered out or spoke out, something about going in there and checking them cars.

Q. I will ask you if you didn't hear Reese Thomas tell him he couldn't go in there?

A. No, sir, I didn't hear that.

Q. Didn't you get out of Hawkins' car and come over there?

A. No, sir.

Q. And join in the conversation and tell Reese Thomas he ought to let him go in and see about livestock?

A. No, sir, I didn't.

Q. Didn't you then argue with Reese Thomas a while, and Reese finally said "I'll let him go in and stay 30 minutes"?

A. No, sir, I didn't argue with him or say anything to him.

Q. Didn't you hear Reese Thomas tell Mr. Mitchell right there "You can go in and stay 30 minutes, and if you are not out by that time we are coming in and get you"?

A. No, sir, I didn't hear him say that.

Q. And didn't you then see Reese Thomas pull his car out so it wouldn't block the gate?

A. I saw him move his car.

Q. And Woelde drove on in?

A. I saw him move his car.

Q. And you saw Mr. Woelde drive on in?

A. Yes, sir, they went in through the gate, that's right.

Mr. Simpson:

That's all. I don't believe I care to ask him anything else, Your Honor.

The Court:

All right, come down.

(Witness excused.)

The Court:

Gentlemen, we are going to recess for lunch now. Be back at 1:30.

(Whereupon, at 12:20 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session.

1:30 P. M.

The Court:
All right, call your next witness.

Mr. Pettus:
Mr. Anderson.

HOWARD EUGENE ANDERSON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. Howard Eugene Anderson.
Q. Do you work for the L&N?
A. Yes, sir.
Q. What is your job?
A. Locomotive fireman, engineer and hostler.
Q. Do you live here in Birmingham?
A. Yes, sir.
Q. Are you a member of a labor organization?
A. Brotherhood of Locomotive Firemen and Enginemen.
Q. Did you work on the day of this work stoppage that occurred on October 23, 1955?
A. Yes, sir, yes, sir.

Q. What time did you get off work?
A. Let's see, around 4:15.
Q. About 4:15?
A. Yes, sir.
Q. Did anyone have any conversation with you about the Parker house meeting before it occurred?
A. No, in general conversation I overheard it, that they were to have a meeting there.
Q. You overheard the conversation?
A. Yes, sir.
Q. Did you attend the meeting at the Parker house?
A. I did.
Q. Did you go to the meeting with some one or go by yourself?
A. Well, I rode in my automobile, and I followed Mr. Otts up there.
Q. What time did you arrive at the meeting?
A. Around 4:30.
Q. Was the meeting in the basement?
A. Yes, sir.
Q. Were the men in the basement when you arrived, or were they outside?
A. I think there were some outside probably.
Q. Outside?
A. Some inside.
Q. How long did the meeting last?
A. I venture to say about 30 minutes.
Q. About 30 minutes?
A. Yes.
Q. Did you make any statements there at the meeting that you recall?
A. Well, I don't know whether I made any statements. I talked to several of the men around there. They were in groups you know, shifting about.
Q. You would go from one group to another?

A. Yes, sir.

Q. Or stay in the same group?

A. In a sense, yes, sir.

Q. Was there anyone that was talking to the meeting as a whole there that you recall?

A. I beg your pardon?

Q. Was there anyone talking to all of them assembled there in the basement, or were they just talking?

A. They were just talking in a group.

Q. What was the subject of discussion?

A. The general talk was mostly about what they were going to do about those hostler helpers jobs, was there any way to restore them.

Q. Do you remember that any of the men said anything about what they were going to do?

A. No, sir.

Q. You just don't remember anything?

A. No, sir.

Q. Was Mr. Kennedy there?

A. I believe he was.

Q. T. A. Kennedy, do you recall any particular statement he made?

A. No, sir.

Q. Did you stay until the end of the meeting?

A. I think I did, yes, sir.

Q. There has been some testimony here about some vote or show of hands, or anything like that. Did you see anything like that yourself?

A. No, sir.

Q. Were you in the basement that whole time?

A. Yes, sir.

Q. Did you leave that meeting with anyone?

A. No, sir.

Q. When you left the meeting, where did you go?

A. I went home.
Q. You went home?
A. Yes, sir.
Q. Did you stay at home all that evening?
A. Well, up until about 8:30.
Q. About 8:30?
A. Yes, sir.
Q. Where did you go then?
A. I went to my daughter's house.
Q. You went to your daughter's house?
A. Yes, sir.
Q. Did you visit with her a while?
A. About an hour, something like that.
Q. When you left your daughter's house did you go anywhere else?
A. I went down to Rex's Barbecue.
Q. Did you see anyone down there that you recall?
A. Well, I saw a bunch of railroad men.
Q. A bunch of railroad men?
A. About all I—
Q. Were they all crafts?
A. Sir.
Q. Were they all crafts?

Mr. Gibson:
We object to leading him.

A. Yes, sir.

The Court:
Sustained.

Q. State whether or not there was one or more crafts of railroad men that you saw there.
A. Oh, yes, there was one or more crafts.

Q. One or more?
A. Yes, sir.
Q. How long did you stay at Rex's?
A. Oh, about, I don't know, I guess about—it might have been a couple of hours.
Q. A couple of hours?
A. Yes, sir.
Q. Were you in the cafe part or were you on the outside or just where were you in that vicinity?
A. Well, I went inside and stayed a few minutes. I came back out and I believe I, I remember—yes, I got with Bruce Barnett, and he and I went out and sat in my car. We had a talk.
Q. How long were you out there, do you recall?
A. It was about an hour or better.
Q. There were just the two of you in the car, is that right?
A. Yes, sir.
Q. Had you come down to Rex's in your own automobile?
A. Yes, sir.
Q. When you left, did you leave in your own automobile?
A. Yes, sir.
Q. Where did you go?
A. I went home.
Q. You went home?
A. Yes, sir.
Q. Did you spend the rest of the night at home?
A. Yes, sir.
Q. On Monday, tell us what you did.
A. Well, I was to go back to work, I mean it was my time to go back to work, it was at 7:55 at that time. My time was to go back to work at that period, it was to be at 7:55 a. m. I went down to the Rex's Barbecue down there.

Q. At that time?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, offhand, I don't know.

Q. Did you stay all day?

A. No, sir.

Q. Well, did you go anywhere else that day that you recall?

A. Not that I recall.

Q. How about Tuesday, what happened on Tuesday?

A. Well, I went back out there that morning, out to Rex's, at the same time.

Q. Out to Rex's?

A. Yes, sir, just a little before my work time.

Q. Did you stay around there all of the day?

A. No, sir.

Q. Where else did you go?

A. Well, I went home and stayed around there a while. And that night I drove down to, downtown.

Q. You drove downtown that night?

A. Yes, sir.

Q. Do you know a man by the name of Ed Weldon?

A. Yes, sir.

Q. Did you go to his house at any time during the work stoppage?

A. Yes, sir.

Q. Do you recall what day that was?

A. No, I can't recall what day it was.

Q. You don't know whether it was Monday, Tuesday or Wednesday?

A. No, sir, I don't.

Q. Is that right?

A. No, sir.

Q. Did you go to his house?

A. Yes, sir.

Q. What time of the day or night was it, if you recall?

A. Oh, it was, I venture to say it was about, it was up in the early afternoon.

Q. Early afternoon?

A. Yes, sir.

Q. Do you recall who was there when you went to his house?

A. Well,—

Q. Was he there?

A. Yes, sir, he was there.

Q. He was there?

A. Yes, sir.

Q. Do you recall any of the others?

A. Well, Bruce Barnett was up there. I had driven up there to his house to get him to show me where he lived.

Q. Just tell us what occurred, if anything, at Weldon's house.

A. Well, they were having a meeting down there at, down here in town at the hotel suite or some place, and there was the International President down here I think, some of the Company officials, and they were trying to reach an agreement to go back to work. And he was to receive, some one up there was to call Mr. Weldon and let them know if they had reached an agreement.

Q. While you were there, did anybody report any such call?

A. No, sir.

Q. How long were you at Mr. Weldon's place?

A. Well, 20 or 30 minutes.

Q. Then did you leave?

A. Yes, sir.

Q. Now, on Wednesday tell us what you did?

A. Well, I came back down to Rex's again just before I was supposed to go to work and stayed around there a while.

Q. Did you stay at Rex's all day?

A. No, sir.

Q. If you went anywhere else and recall, tell us where it was.

A. Well, I—I started back down to Rex's that night, I venture to say about maybe 8:30 or 9:00 o'clock, I don't know just exactly what time it was.

Q. Did you go down to Rex's Wednesday night?

A. Well, I started down there and I saw a group of men up there at the powerhouse gate, at the 39th Street gate, a big crowd of people around there, a crowd of automobiles, a lot of loud talk going on, and I stopped there to see what it was all about.

And there was a bunch of men in the inside there armed, and they wanted, the fellows told them to get them out of there, they would go to work.

Q. The men that were armed were on the Company property?

A. Yes, sir.

Q. Were they gotten out of there?

A. Well, the police came up there in a couple of police cars, and then they went in there and had a conference with them. Mr. Camp drove up, that is the Sergeant of Police for the Company, and I asked Mr. Camp, I said "Mr. Camp, are those your men?" He said "No, my men has had orders to stay out of there. Those are Bodeker's men."

Q. They were what?

A. Those are Bodeker's men.

Q. Bodeker?

A. Yes, sir.

Q. Did the Bodeker men leave, were they taken away by the police then?

A. Well, they went in, they were not necessarily taken away by the police. The police led them, or they got in their automobiles and came out and the police went ahead of them.

Q. They came ahead of them?

A. Yes, sir.

Q. Were the regular L&N employees, they were waiting on the outside?

A. Oh, yes, yes, sir.

Q. After these Bodeker men left, did the employees then go back to work?

A. Yes, sir.

Q. And how long have you been working for the Railroad?

A. I've been working for the Railroad ever since 1937, but I was in another department. This department I'm in, I have been there since June 22, 1942.

Q. Have you been paid anything for the days during the work stoppage?

A. No, sir.

Q. What is your average pay per day?

A. Well, I guess you would say it would average, it averages, it would be around $16.00.

Q. $16.00?

A. Yes, sir.

Q. All right.

A. Some days I make above sixteen, some a little below.

Mr. Pettus:

All right, that's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Anderson, you were one of the men in charge of the pickets during the strike, weren't you?

A. No, sir.

Q. You say that's not true?

A. That's right.

Q. Now, Mr. Anderson, you went to the Parker meeting, you have told Mr. Pettus. We have gone into that pretty thoroughly, and we don't want to go all over that again, but let me ask you this. You have been in the Courtroom during the trial?

A. Absolutely, yes, sir.

Q. The entire trial, haven't you?

A. That's right, yes, sir.

Q. You have heard various witnesses name the people who were at that meeting?

A. That's right.

Q. Do you recall that those people were there?

A. Yes, sir.

Q. Those that were named?

A. Yes, sir.

Q. All right. You don't recall any other people that were there?

A. No, sir.

Q. At that meeting they discussed what they could do to get those hostler helpers jobs back, didn't they?

A. Yes, sir.

Q. That is what you told Mr. Pettus?

A. Yes, sir.

Q. I will ask you, Mr. Anderson, if you didn't hear it said that everybody would get back down to the Rex's Cafe that night around 8:30?

A. No, sir.

Q. And would go through the Yard around 9:00 o'clock and close down the Yard?

A. I did not.

Q. But you did show up at the Rex's Cafe about 9:30, didn't you?

A. That's right.

Q. And when you got there the Yard was shut-down, wasn't it?

A. That's right.

Q. Now, you went on home, you told us, on Sunday night?

A. Yes, sir.

Q. You came back down there on Monday morning, didn't you?

A. That's right.

Q. And you came back down there on Tuesday morning too, didn't you?

A. That's right.

Q. You hung around there, down there some time both mornings?

A. Yes, sir, that's right.

Q. And you saw a lot of men down there?

A. That's right.

Q. They were railroad men, were they not?

A. That's right.

Q. And you knew a number of them, didn't you?

A. Yes, sir.

Q. You recognized them?

A. Yes, sir.

Q. They were men you worked with, weren't they?

A. Yes, sir, that's right.

Q. Some five weeks after this occurrence, you couldn't tell us a person you saw down there, could you?

A. That's right.

Q. Can you tell us any of them now?

A. No.

Q. You still can't tell us anybody you saw on those two occasions at all?

A. I can't single out anybody.

Q. Well, you mean that your mind just doesn't pick out of that number of people that you saw and that you knew any single person that you saw down there on Tuesday or Wednesday?

A. If I had an occasion to associate them with that particular time, I probably could.

Q. Yes, sir. But you are telling us then that you didn't have occasion on either time that you were down there, Tuesday and Wednesday, to single out a single person in your mind, so that you can tell us his name?

A. That's right.

Q. Is that right?

A. That's right.

Q. Now, you went down to Morris Avenue—you told Mr. Pettus you came to town. Where you went was down by the L&N Passenger Station, wasn't it?

A. Well, across the street from it.

Q. Yes, sir, down on Morris Avenue, wasn't it?

A. That's right.

Q. You were right there on that street where opposite you was the L&N Passenger Station and the general offices and so forth?

A. Possibly somewhere near it.

Q. Now, what business did you have down there Tuesday night?

A. Well, I didn't have any particular business.

Q. You didn't have any particular business?

A. No, sir.

Q. You were not down there to check on the pickets?
A. No, sir.
Q. You didn't see anybody picketing down there?
A. No, sir.
Q. Now, let's get that cleared up. By "pickets", what do you understand by the term "a picket"?
A. A person that is authorized to carry a sign.
Q. All right, sir. Well, let me ask you if you saw any men that you recognized as railroad men standing around Morris Avenue, around the entrance to the L&N property there on Tuesday night?
A. Not that I recall.
Q. You didn't see Mr. Grissom down there?
A. No, sir.
Q. You didn't see him waiting for Slim down there?
A. No, sir.
Q. You heard him testify he was down there?
A. That's right.
Q. You didn't see that?
A. I didn't see that.
Q. You stayed in your car?
A. Sir?
Q. You stayed in your car?
A. Part of the time.
Q. You got out some of the time?
A. Yes, sir.
Q. Now, you were there some 2 hours, you say?
A. More or less.
Q. More or less?
A. Yes, sir.
Q. All right. Now, you did not go down there again on Wednesday you told us?
A. No, sir.

Q. Now, Mr. Anderson, during this strike, didn't you call up a number of people and ask them to go on picket duty?

A. I did not.

Q. You tell the jury that you did not do that?

A. I will tell the jury I did not.

Q. You tell the jury at no time during this stoppage, from the 23rd to the 26th of October, 1955, you called up men out there that worked for the Railroad and asked them to go on picket duty?

A. I did not call them.

Q. You heard some of them testify?

A. Sure, I heard them.

Q. Sir?

A. Yes, sir.

Q. You have heard that, haven't you?

A. Absolutely.

Q. Now, did you call Mr. Chapman?

A. No, sir.

Q. You didn't talk to Mr. Chapman about picketing?

A. No, sir.

Q. During the strike?

A. No, sir.

Q. What about Mr. Grissom?

A. No, sir.

Q. You didn't talk to him?

A. No, sir.

Q. Now, let's see if I can—are you positive you didn't talk to anybody on the telephone about picketing?

A. I am positive.

Q. All right, sir. Well, did you call up a lot of people and talk to them about the Weldon meeting?

A. No, sir.

Q. You did not?

A. I did not.

Q. As a matter of fact, do you recall talking to anybody during this period of time by telephone at all?

A. No, sir.

Q. All right. I will ask you do you recall when your deposition was taken back in November, of last year?

A. Yes, sir.

Q. Your testimony was taken and you were under oath and your lawyer was present when we took your pretrial deposition, you remember that, don't you?

A. That's right.

Mr. Smith:

This is page 44.

Q. I will ask you if these questions were not asked you and if the answers indicated were not given by you:

"Q. Did you call anyone at all during the three day suspension of operation and talk to them with reference to picketing, or standing around, or being posted at any place of business of the L&N Railroad?

"A. I don't recall.

"Q. Sir?

"A. I don't recall.

"Q. Well, do you testify you did not do that?

"A. I said I don't recall.

"Q. You mean you just don't know, and can't tell us whether or not you did that?

"A. That's right."

Now, Mr. Anderson, were those questions asked you and those answers given by you at the time?

A. I suppose they were.

Q. You know that they were, don't you?

A. Well, yes, sir.

Q. Now, Mr. Anderson, you were questioned here, and you mean you just don't know, you can't tell us whether you did or not, is that right? You were not positive then, were you?

A. No, I was not too sure.

Q. No, sir. Has anything occurred since November, of 1955, to make your recollection better today than it was then?

A. No. But I know that these men that got up here and testified that I did call them, I know that I didn't.

Q. Well, but you don't know of any reason why your recollection would be better today than it was in November, of 1955, do you?

A. No, sir.

Q. Sir?

A. I don't guess I do.

Q. No, sir, and you were not sure then?

A. No, sir.

Q. You heard Mr. Rich testify here, didn't you?

A. That's right.

Q. You know Mr. Irvin Rich, don't you?

A. Too well.

Q. Too well?

A. Yes, sir.

Q. You know him well enough to call him up on the telephone during the strike, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You had known him some time prior to that, hadn't you?

A. All I know about him, he is just a Section 8.

Q. A what?

A. Section 8.

Q. What is "Section 8"?

A. He is drawing a pension from the Government for mental disorder.

Q. Oh, he is? Do you know that?

A. (No response.)

Q Mr. Anderson, don't you know it as a fact that Mr. Rich is drawing disability from the Federal Government because of a war wound?

A. A war wound?

Q. Yes.

A. I've heard he shot his toe off to get out of it.

Q. Don't you know that he was wounded in the war?

A. I said I've heard he shot off his toe to get out of it. I don't know whether he was wounded or not.

Q. I see, you don't know?

A. Yes, sir, that's right.

Q. Now you say that you didn't call Mr. Rich on Tuesday some time around 12:30 and ask him to come to the Ed Weldon meeting? You tell us that now?

A. Tell you what?

Q. Do you testify that you did not call Mr. Irvin Rich?

A. I don't recall it.

Q. You don't recall it?

A. No, I don't.

Q. You won't tell us that you didn't?

A. I won't say that I did, either.

Q. You won't say that you did or that you did not?

A. That's right.

Q. Well, then you heard Mr. Rich testify?

A. Yes, I heard him.

Q. And you are not able to deny what he said from that stand, are you?

A. I don't think I called him, I am pretty sure I didn't.

Q. You don't recall it, is that right?

A. (No response.)

Q. Do you have any recollection about calling him or not calling him, Mr. Anderson?

A. I don't think I called that man.

Q. Let me refer you to your deposition again. You had talked to Mr. Rich on the telephone before, hadn't you, before that time?

A. Yes, about a couple of years or more before that.

Mr. Pettus:

What page is that?

Mr. Smith:

Page 26—excuse me, 25, page 25.

Q. I will ask you if these questions were not asked you and you gave these answers when your deposition was taken:

"Q. Do you know a man named Rich?

"A. Yes, sir.

"Q. What is he, a fireman?

"A. Yes, sir.

"Q. Did you talk to him by telephone?

"A. I don't remember.

"Q. During the stoppage?

"A. I don't remember talking to him."

You remember those questions and answers, don't you?

A. That's right.

Q. Now skipping some, going to page 26, let me ask you about this question and answer:

"Q. To refresh your recollection, Mr. Anderson, I will ask you whether or not it is true that on Tuesday, October 25 you telephoned Mr. Rich at his home and talked to him about a meeting which was scheduled for that afternoon at Ed Weldon's house?

"A. I don't recall that I did."

Now, just skipping one or two more, here is page 28:

'Q. Now, since you have had an opportunity to think about it, I will ask you again whether you telephoned E. Rich at about 1:00 p. m. on Tuesday, October 25, and notified him to attend a meeting at Ed Weldon's home?

"A. I don't recall any particular time I talked to him. I have called him a lot of times, but whether or not it was on that day, I don't remember.

"Q. Well, did you mention to Rich at any time—

"A. I don't recall it.

"Q. —the meeting at Weldon's home?

"A. I don't recall it, if I did."

Then one more question page 29: "You don't know whether you would remember having called Rich or not", and your answer "No, sir."

Now, do you remember those questions?

A. Yes, sir.

Q. Do you, sir?

A. Yes, sir.

Q. And you remember the answers?

A. Yes, sir.

Q. So you don't really know whether you talked to Mr. Rich or not, do you?

A. Why I said I don't think I did.

Q. Well, you didn't—you testified here you didn't recall it, and finally you testified that you didn't know. You didn't know at that time, is that right?

A. That's what you said.

Q. I read it correctly, I believe, there, didn't I? You don't recall that there was anything different from that, do you?

A. No, I don't.

Q. All right. Regardless of whether Mr. Rich was wounded in the war or not, you are not able to sit there on the stand and say that what he said wasn't true about that call, are you?

A. I beg your pardon, I didn't catch that question.

Q. I say you can't sit there on that witness stand under oath and tell these gentlemen that what Mr. Rich testified to about that telephone call was untrue, can you?

A. I ain't never known him to tell the truth.

Q. You are unable to tell the jury that what he said about that telephone call was not true, talking about that particular thing that he said? You won't tell the jury that is not true, will you?

A. Well, I won't tell them that it is untrue, either.

Q. You won't tell them it is not true?

A. (No response.)

Q. Now, that was about the Weldon meeting. You did go to the Weldon meeting, didn't you?

A. That's right.

Q. And you had called other people about going, hadn't you?

A. I don't think so.

Q. You don't think so. As a matter of fact, Mr. Anderson, at the Parker meeting on Sunday afternoon, you assisted in making up the list of pickets, didn't you?

A. There was no list of pickets made.

Q. You remember Mr. Fleming sitting there—

A. I know what Fleming said.

Q. —in the chair you are sitting in, and testifying that you did, don't you?

A. What's that?

Q. You remember Mr. Fleming testifying here, don't you?

A. Sure.

Q. Don't you remember him saying that the list was made up?

A. Sure, I remember what he said.

Q. Don't you remember him saying you assisted in it?

A. Yes, I remember him saying that.

Q. You say that is not true?

A. I say that is not true.

Q. All right, but you did go to the Weldon meeting?

A. That's right.

Q. Now, tell us if you will, please, sir, about who you saw there. You saw Mr. Weldon, you have told us?

A. Yes, sir.

Q. That was his home?

A. That's right.

Q. That is Mr. Ed Weldon, isn't it?

A. Yes, sir, that's right.

Q. Not Mr. Jim Weldon?

A. That's right.

Q. And Mr. Barnett, you saw him, you say you went with him?

A. Yes, sir.

Q. Now, didn't you see Mr. J. M. Brown, Jr. there?

A. I believe he was.

Q You testified that you did, didn't you? Haven't you testified that you did see Mr. Brown there?

A. I might have testified that he did.

Q. If you testified that you did see him five weeks after it occurred, that was accurate, wasn't it?

A. Yes. That has been about eight or ten months ago.

Q. Yes, sir. Well, referring to page 31 of your deposition then, the question was asked you:

"Q. Mr. J. M. Brown, Jr., he was there, wasn't he?

"A. Yes.

"Q. He was there?

"A. Yes."

Now, those questions were asked you, weren't they?

A. Sure.

Q. So it is not a question of you believing it, he was there or you wouldn't have told us that he was there, would you?

A. Well, if I said he was there, he was there.

Q. All right. How many men were in that meeting, about a dozen?

A. I guess so.

Q. About a dozen, and you knew all of them, didn't you?

A. Well, I probably did.

Q. Sir?

A. I probably did.

Q. You probably did. You don't recall any of them were strangers, do you?

A. No.

Q. Now, you have named Mr. Weldon, you have named Mr. Barnett, and you named Mr. Brown. Of course, we know that you were there. Will you tell us the name of any other man that was at that meeting at Mr. Ed Weldon's house?

A. Right off hand I can't.

Q. Well, do you think that you can—you say not off hand that you can't?

A. No, sir.

Q. I will ask you if you think you could—did you tell us any other men that were at that meeting some five weeks after that meeting was held when we took your deposition? Did you at that time name anybody els that was at that meeting?

A. I don't know whether I did or not.

Q. Turn to page 33 of your deposition:

"Q. I believe you said there were about a dozen?

"A. Approximately, maybe more or less.

"Q. And of that number you remember only four, only the ones you named?

"A. That's the only ones I can recall."

You do remember when we asked you about that?

A. That's right.

Q. You didn't name anybody else at that time, did you?

A. Well, I stated I couldn't recall them, on that deposition.

Q. I understand that, but you didn't name anybody else at that meeting at that time, did you?

A. No.

Q. And you can't tell us now anybody else that was at that meeting at Mr. Weldon's house?

A. Certainly not.

Q. Cerainly not, but you do remember Mr. Brown was there, Mr. Jim Brown, Jr., don't you?

A. Well, you asked me if he was there whenever you took that deposition.

Q. That's what you have told us, that he was there, and that Mr. Weldon was there and Mr. Barnett was there, isn't that right?

A. That is right.

Q. Now, do you tell the jury that that meeting wasn't a meeting that was called to discuss the picket assignments?

A. It was just to find out if there was any settlement reached by that conference that they had in Birmingham.

Q. You tell us that you didn't tell Mr. Irvin Rich on the telephone that the meeting was called to line up pickets?

A. No.

Q. Do you tell us that when he demurred and said he would not be able to come, you didn't make the statement to him "It's your damned job"?

A. I did not.

Q. You didn't do that?

A. No, sir.

Mr. Smith:

I think that's all.

The Court:

All right, come down.

(Witness excused.)

Mr. Pettuts:
Mr. Otts.

J. B. OTTS, JR., called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?
A. J. B. Ottts, Jr.
Q. Are you one of the Defendants in the case?
A. Yes, sir.
Q. Where do you live?
A. I live in Gardendale now.
Q. What is your occupation?
A. Locomotive engineer.
Q. Are you a member of a labor organization?
A. Yes, sir.
Q. Do you hold an office?
A. Yes, sir.
Q. First, what is that organization?
A. Brotherhood of Locomotive Firemen and Enginemen.
Q. Do you hold an office in that organization?
A. Yes, sir.
Q. What toffice do you hold?
A. Chairman of tthe Local Grievance Committee.
Q. Just state briefly what your job as Local Chairman is, what your duties are?
A. It is the duties of the Local Chairman to handle grievances or disputes that may arise between the firemen or engineers that I might represent and the

Company. And it is also my duty to see that the BofLF&E agreement is lived up to or enforced.

Q. Now, that agreement that you refer to, is it in this sort of a little book there (indicating), that is one of the exhibits to the fifth defense here that we filed, Exhibit A?

A. Yes, sir.

Q. Is that the agreement that was in force in October, 1955?

A. Yes, sir, that's it.

Mr. Pettus:
Now, we offer that agreement in evidence.

Mr. Simpson:
We object to it as immaterial.

Mr. Pettus:
Defendants' next exhibit.

The Court:
Overruled.

Mr. Simpson:
We except.

(Defendants' Exhibit No. 5 was marked for identification.)

The Witness:
Your Honor, that is the agreement between the L&N Railroad and the Firemen and Hostlers.

The Court:
Now was that in effect during October, 1955?

The Witness:
Yes, sir.

The Court:
I overrule the objection.

Mr. Simpson:
We except.

Q. Mr. Otts, this notice with regard to the abolition of the hostler helper jobs, Defendants' Exhibit 1, shows that notices were sent to you. Did you get a copy of that notice?

A. Yes, sir.

Q. Do you recall getting it?

A. Yes, sir.

Q. After receiving a copy of the notice of the abolition of the hostler helper jobs—are the hostler helpers, some of the men that are covered by this agreement that has just been introduced in evidence?

A. Yes, sir, they are covered by that agreement.

Q. And you were the Local Chairman representing the hostler helpers, is that correct, the outside hostler helpers?

A. Yes, sir.

Q. Are there other Local Chairmen here in Birmingham for the Firemen's Organization?

A. Yes, sir, at that time there were two others besides myself in that particular Lodge of our organization.

Q. What was that Lodge, what was the name of it, or what was the number of it?

A. South Wind Lodge 937.

Q. The Local Chairmen though are divided into Divisions, is that correct?

A. Yes, sir.
Q. On the Railroad?
A. Subdivisions.
Q. What was your Division?
A. We were all on the same Division, we had three Subdivisions here in Birmingham.
Q. What was your Subdivision?
A. Mine was S&NA.
Q. S&NA?
A. Yes, sir.
Q. What does that stand for?
A. South and North Alabama. It is sometimes referred to as the main line.
Q. When you got this notice with regard to the abolition of the hostler helpers jobs did you take this matter up with the officials of the Company?

Mr. Simpson:
We object to leading.

Mr. Pettus:
I am trying to save some time.

The Court:
I overrule the objection.

A. Yes, sir, I did.
Q. Did you also have conferences with the men involved, Dougherty, Grissom, and McCutcheon?

Mr. Simpson:
We object to leading him.

The Court:
Don't lead your witness. Overruled, however.

Q. Did you?

A. I talked to Dougherty. I remember talking to him individually, but whether or not I talked to McCutcheon and Grissom individually, I don't know. They were present at that Friday night meeting and heard that letter from Mr. Paschal read.

Q. Which officials of the Company did you take the matter up with yourself?

A. The Master Mechanic, Mr. Quiggins.

Q. Do you recall when you took it up with him?

A. It was on Wednesday or Thursday of the week preceding Sunday, October 23.

Q. How did you do that?

A. I called him.

Q. Did you take it up with him in person or by telephone?

A. I called him on the telephone.

Q. Will you just repeat as well as you recall the conversation that you had with Mr. Quiggins?

A. I called Mr. Quiggins and asked him what he was trying to do to me. I was referring to the abolition of the outside hostler helper jobs, and he apparently knew what I meant, because he laughed and said that it was none of his doing, that it came from higher up. He said that Mr. Kirchner had instructed him to abolish the outside hostler helpers jobs here in the Birmingham Boyles Terminal, and replace them with laborers, and that that was later confirmed by the officials in Louisville, and that so far as he was concerned his hands were tied.

He went further on to say that he had held off on that for 60 days or more because he had—he anticipated trouble when he tried to invoke it.

Q. Well, the result of this conversation with Mr. Quiggins was that he said he couldn't do anything about it?

A. Yes, sir.
Q. Is that right?
A. That's right.
Q. Did you take it up with any other official of the Railroad yourself at that time?
A. No, sir.
Q. Did you refer the matter to your General Chairman?
A. Yes, sir, I did.
Q. Who was your General Chairman at that time?
A. Mr. Jake Paschal.

Mr. Pettus:
Do you want to see this letter?

Mr. Simpson:
Yes.

Mr. Gibson:
May we see it?

(The letter was handed to counsel.)

Q. Is this a letter that you received from Mr. Paschal, dated October 20, 1955, with reference to hostler helper jobs?
A. Yes, sir.

Mr. Pettus:
We offer this letter in evidence and ask that it be marked Defendants' next exhibit.

Mr. Gibson:
No objection.

(Defendants' Exhibit No. 6 was marked for identification.)

Mr. Pettus:

May it please the Court we will read it at this time. This is on the letterhead of the Brotherhood of Locomotive Firemen and Enginemen, and dated October 20, 1955, at Louisville, Kentucky. And it is a letter addressed to Mr. W. S. Schoel, Director of Personnel, Louisville & Nashville Railroad Company, 908 West Broadway, Louisville 1, Kentucky.

(The letter was read to the jury.)

Q. Now, Mr. Otts, did you attend the meeting of your Local Union on Friday of that week?

A. I attended one Friday night of that week.

Q. Friday night?

A. Yes, sir.

Q. There has been some testimony about a letter being read. Was this the letter, Defendants' Exhibit 6, that was read at that meeting?

A. Yes, sir.

Q. Now, did you receive any advice from Paschal that the Company had replied to this letter?

A. I talked to Mr. Paschal some time the next week and he said that at that time that they never had answered him.

Q. They never did answer that letter?

A. No, sir.

Q. Up to the time you talked to him?

A. That's right, they ignored it.

Q. Was there any discussion of the hostler helper jobs or the abolition of those jobs at the Union meeting on Friday night?

A. To the best of my recollection that letter was read and there was no discussion carried on.

Q. Now, after the meeting was over, was there any discussion of the hostler helper jobs?

A. Well, there wah no discussion of it. Mr. Grissom, Mr. McCutcheon, and myself, and three or four more were standing down there on the sidewalk, or out in the street, I don't recall which, by the side of the meeting place, and Grissom I believe suggested that we get together and discuss the thing the following Sunday.

We needed to get some information as to how to handle the case, and what to do about it. The Company had abolished the craft, and that is something new to me.

Q. And on Saturday did you have any discussion that you recall with either McCutcheon or Thomas with reference to the abolition of these jobs? Do you recall any particular thing there?

A. I worked Saturday, I went to Montgomery the next Saturday.

Q. You went to Montgomery the next Saturday?

A. Yes, sir.

Q. Now, this notice that had been put up, that was on October 19?

A. Yes, sir.

Q. Had this notice created any discussion out there at the Boyles Yard among the employees?

A. Yes, sir, it created quite a bit of discussion, all crafts were discussing it. They said that since—

Mr. Simpson:

We object to what the crafts said.

The Court:

I sustain the objection.

Mr. Pettus:

We except.

Q. Did you hear any rumors of a possible work stoppage after that bulletin was put up on the board?

Mr. Simpson:
We object to what he may have heard from some undisclosed source, and whether he interpreted the rumor as being a work stoppage rumor.

The Court:
Overruled.

A. No, sir, I did not.
Q. You did not?
A. No, sir.
Q. Now, on the Saturday night before the Friday, did you have any conference with McCutcheon or Thomas in the washroom there, at the Boyles Yard with reference to the making of any picket signs or anything of that sort?
A. No, sir. I got in at 7:00 o'clock, 7:00 p. m. Saturday night. I believe that's right. I have my time book, if I can refer to it.
Q. You can refer to your time book.
A. Saturday was the 22nd, wasn't it?
Q. Yes, sir.
A. I got off at 7:15 Saturday night, and I went home and went to bed, and I didn't discuss it with them Saturday night.
Q. Had you had any conversation with either Mr. Thomas or Mr. McCutcheon in regard to the making of picket signs at any time prior to the work stoppage?
A. Well now, I was called for 5:00 o'clock that morning out of Boyles, and I got over to the roundhouse about 4:15, we have to go on duty 30 minutes

before call time, and there could have been some discussion about what we would do about signs in the event the Brotherhood called a strike. I don't remember too much about it. I may have talked to them and told them to get some signs, or not told them to get some signs, I don't know. But I do recall some kind of duscussion.

Q. There was a discussion about it?

A. Yes, sir.

Q. But at that time you were in contact with the Brotherhood, with Mr. Paschal in Louisville, is that correct?

A. Yes, sir, I had already been in contact with him.

Q. You had been in contact with him, and they asked you about the signs, and there was just a discussion that if the Brotherhood authorized a walkout, to have the signs ready, is that right?

A. Something to that effect.

Q. Is that right?

A. Yes, sir.

Q. Do you remember the day the work stoppage occurred on Sunday?

A. Yes, sir.

Q. Did you do any work on Sunday?

A. Yes, sir, I was called for 7:00 o'clock Sunday morning for a Yard job at Boyles.

Q. Are you a qualified engineer, Mr. Otts?

A. Yes, sir, that was the job—

Q. And also a fireman?

A. Yes, sir.

Q. What run did you make that day?

A. I was working on an extra Yard engine I believe.

Q. Extra Yard engine?

A. I don't think it was a regular run. I know it was a Yard job.

Q. What time did you get off?

A. 4:25.

Q. You got off that job at 4:25?

A. Yes, sir.

Q. Well now, you know Mr. Fleming, don't you?

A. Yes, sir.

Q. Did you see him, and hear him testify that you were at Rex's Barbecue at 3:00 o'clock?

A. Yes, sir, I heard him testify I was there in my street clothes, but I wasn't. I was over on the engine working.

Q. In your work clothes?

A. Yes, sir.

Q. Have you got your book there?

A. Yes, sir.

Q. Will you check that in your book, to double check that?

A. October 23 I had engine No. 16. Fireman R. E. Frazier. It was an extra Yard job. I went on duty at the roundhouse at Boyles at 7:00 o'clock. I was relieved at the roundhouse at Boyles at 4:25 p. m. I made an hour and twenty-five minutes overtime.

Q. When you were relieved did you go the washroom and change clothes?

Mr. Simpson:

Now, we object to telling him what he did.

The Court:

I sustain the objection to the question. It is a leading question.

Q. What did you do with reference to changing clothes that night? Did you change your clothes right then?

A. I went in the washroom and made out my trip card for me and the fireman, but I didn't change my clothes.

Q. You didn't change your clothes?

A. No.

Q. Did you leave that place?

A. Yes, sir.

Q. Where did you go?

A. I walked across the street to where my car was parked, got in my car, and went up to Mr. Parker's house.

Q. Was there anyone in your car with you?

A. No, sir, I was alone.

Q. What clothes did you have on when you went to Mr. Parker's?

A. I had on a pair of overalls, and a blue work shirt, and I had an old brown jacket with a fur collar on it that I wear.

Q. Were those the same clothes you had been working in all day?

A. Yes, sir.

Q. What time did you arrive at Mr. Parker's house?

A. It was some time between 4:30 and 4:45.

Q. Now where were the men when you arrived at the house?

A. Well, some of them were out in the yard and some of them were inside.

Q. Did you go inside?

A. I spoke to some of them as I went up, as I arrived there, and we stood around there a few minutes, and then walked on in.

Q. How many men, about, were at this meeting, do you recall?

A. I would judge around 20 or 25, something like that.

Q. And was there anyone there that was in charge of the meeting that you could see?

A. No, sir.

Q. Do you recall what was discussed at the meeting?

A. The abolition of the outside helpers was discussed there.

Q. Now, did you have anything to say about that?

A. Well, some of the men there, Kennedy or Sutterlin and McCutcheon said something about handling the thing with the General Chairman, and I told them that I had already talked to the General Chairman about it, and also Mr. Quiggins about it.

Q. You told them you had already talked to the General Chairman?

A. Yes, sir.

Q. Now, that is Mr. Paschal?

A. Yes, sir.

Q. And you talked to Mr. Quiggins, is that right?

A. Yes, sir.

Q. Did you tell them then what had been said by those men or not?

A. I don't know whether I did or not.

Q. Now, did anyone else that you recall have anything specific to say at that meeting?

A. No, sir, I don't recall anything else that was said there.

Q. Do you recall Mr. Kennedy's testimony here in this case, that he had some statement to make?

A. Yes, sir.

Q. Do you recall him testifying here?

A. Yes, sir.

Q. Do you recall independently of your own knowledge anything that Mr. Kennedy may have said?

A. The only thing I heard him say was that the General Chairman should be notified, or it should be taken up with the General Chairman first, or words to that effect.

Q. There have been some remarks attributed to Mr. Reese Thomas. Do you recall yourself anything that Mr. Thomas said?

A. No, sir, I don't recall hearing, having heard Mr. Thomas say anything.

Q. Now at this meeting, Mr. Otts, was it held—just tell us what part of the house it was held in?

A. It was in the basement of Mr. Parker's home.

Q. In the basement?

A. Yes, sir.

Q. Were the men sitting or standing?

A. Some of them stood up, and some of them sat down.

Q. Were they all together there, or were they somewhat separated in small groups?

A. No, they were more or less in small groups, talking amongst themselves.

Q. Was the talk being carried on at the same time by different groups?

A. Yes, sir.

Q. In other words little groups around were carrying on discussions about the matter?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now did you see any show of hands or any voting there?

A. There was no such thing as that done there so far as I know.

Q. Did you call for any show of hands yourself?
A. No, sir.
Q. Did Mr. Thomas call for any?
A. I don't think Mr. Thomas said—opened his mouth up there, the best I can remember.
Q. And you saw nothing of that kind at the meeting?
A. No, sir.
Q. When did the meeting break up?
A. I would think around 5:00 or 5:10. It didn't last long, 20 or 30 minutes, something like that.
Q. Where did you go then?
A. I went home.
Q. And how long did you stay at home?
A. I stayed at home until about 7:30.
Q. Then where did you go?
A. I went over to the Rex's Barbecue.
Q. How long did you stay at Rex's?
A. Well, I stayed over there about 15 or 20 minutes, and then I brought my car back, back home, and I believe my wife and my family took me back over there and dropped me and they went on to town.
Q. Then you went back by Rex's after you went home, is that right?
A. Yes, sir.
Q. Your second time that you got to Rex's, do you recall about what time it was?
A. That was around 8:00 or 8:30, something like that.
Q. How long did you stay at Rex's?
A. Well, this time I stayed there until around midnight.
Q. Around midnight?
A. Yes, sir.

Q. Did you stay in the cafe or were you on the outside or inside, or just tell where you were, and what you were doing?

A. Well, I was just in and out there, I wasn't in any one particular spot.

Q. Did you see any indication from where you were that a work stoppage was in progress?

A. I saw the men start walking out over there.

Q. Do you recall about what time it was?

A. It was some time around 9:00 o'clock.

Q. Some time around 9:00 o'clock?

A. Yes.

Q. After you left the Yard that afternoon, when you got off your job, from that time until you went home from Rex's, which you say was at about midnight, did you go on the Company property any more for any purpose?

A. To the best of my knowledge and recollection I did not.

Q. You did not?

A. No.

Q. Now at midnight you went on home?

A. Yes, sir.

Q. Did you spend the rest of the night at home?

A. Yes, sir.

Q. On Monday do you recall what you did?

A. I got up about 5:00 or 6:00 o'clock Monday morning and went out and got my paper, and then there was a big, looked about like a 2 inch headline over the front page that stated, or words to the effect that the L&N rail workers had walked out. So I went over to the barbecue stand there, and there were some people standing around over there, and I stood there, stayed around there for maybe a couple of hours, and then I went back home. And Monday

afternoon I come—well, about noon I guess, I got in touch with Mr. Kirchner, that is the Division Superintendent, and I asked him if we could get together and see if we couldn't get these men back to work, that everybody was out over there so far as I knew, they were all losing time, and I would like to see them get back to work. And he said that suited him, he said come down to his office at about 2:00 o'clock.

Q. This was on Monday?

A. On Monday, yes, sir. Mr. Simpson is going to take exceptions to this because I couldn't remember it when my deposition was taken. But anyway I went down to Mr. Kirchner's office at 2:00 o'clock and discussed with him the possibility of getting these men back to work.

Q. Who was there at Mr. Kirchner's office?

A. Well, Mr. Parsons was there, and—

Q. Now, who is Mr. Parsons?

A. He was the Assistant Superintendent at that time.

Q. He was Assistant to Mr. Kirchner?

A. He was Assistant Superintendent, yes, sir.

Q. In other words, Mr. Kirchner was the senior official for the Railroad in this area?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. And Mr. Parsons was his Assistant?

A. Well, the Superintendent has an Assistant to the Superintendent, which is Mr. G. H. Moore, and there is an Assistant Superintendent, which is Mr. J. R. Parsons at that time.

Q. Now, how many men or how many employees were involved in the work stoppage out there?

A. Well, Mr. Kirchner said there were better than 2,500.

Mr. Simpson:
We object to what somebody said about how many there were.

The Court:
I didn't get the question.

Mr. Pettus:
I asked him how many men, how many employees were involved in the work stoppage out there at the time of his conference with Mr. Kirchner.

The Court:
I overrule the objection.

A. Did you get the answer? Did everybody get that?

The Court:
What was the answer?

The Witness:
Mr. Kirchner said that there were over 2,500 people involved in it, not working.

The Court:
Did you know that of your own knowledge?

The Witness:
No, sir, I didn't know.

The Court:
I will exclude the answer, gentlemen. That will be excluded.

Mr. Pettus:
We except. Mr. Kirchner was the official of the Railroad Company at that time, senior official at that time in this area, alter ego of the Company I think for purposes of that sort.

Mr. Simpson:
We withdraw the objection and let it in.

The Court:
All right, the objection is withdrawn.

Mr. Simpson:
To show the jury what sort of thing it was.

Q. Mr. Otts, during the time that the work stoppage was in progress, the employees who were off work were not paid for the time they were off, isn't that correct?
A. To the best of my knowledge they were not paid.
Q. Now in this conference here with Mr. Kirchner who was present? You say Mr. Parsons was there?
A. Yes, sir.
Q. Was there anybody else there besides you and Mr. Parsons and Mr. Kirchner?
A. There was a fireman off of the N&D Division, L. G. Clay, that went up there with me.
Q. Just state what was said in that conference as best you can recall.

A. Well, I told Mr. Kirchner that it was my opinion that if he would reestablish those hostler helper jobs that everybody would go back to work, and he told me in substance that he didn't have the authority to reestablish them, that people in Louisville would have to do that.

He went on further to say that he would contact those people in Louisville, find out what their answer was, and notify me. He said that he certainly would like to see the men go back to work. We were very much in accord on that.

Mr. Simpson:

We object to that as a conclusion of the witness.

The Court:

I sustain the objection to the last statement.

Q. In that conversation you stated that it was your opinion that they would go back to work if the job was reestablished?

A. Yes, sir, that's right.

Q. How long did the conference with Mr. Kirchner last?

A. It didn't last long, 30 or 40 minutes, something like that.

Q. After you left there do you recall where you went?

A. I went to the Molton Hotel with Mr. Clay, and awaited Mr. Kirchner's call. I told him that's where I would be.

Q. Did Mr. Kirchner call you?

A. Yes, sir. Mr. Kirchner called after a length of time, I don't recall how long.

Q. What did he say in that conversation, I mean that telephone conversation?

A. He said that his people in Louisville just were not willing to restore the jobs.

Q. Now, did you leave the Molton Hotel?

A. Yes, sir. I don't recall what time I left there, but I did leave there.

Q. Where did you go then?

A. I went home.

Q. Did you go anywhere else that day from home?

A. No, sir, I don't think so.

Q. Now, on Tuesday, do you recall where you were on Tuesday?

A. Well, on Tuesday I went to the Airport to meet Mr. N. B. Cunningham.

Q. Who is Mr. Cunningham?

A. Mr. Cunningham is Vice-Chariman of the General Grievance Committee, of the Brotherhood of Locomotive Firemen and Enginemen.

Q. Does he work with Mr. Paschal, the General Chairman?

A. Well, he takes Mr. Paschal's place, in other words, he is his Agent, so to speak.

Q. You met him?

A. Yes, sir.

Q. On Tuesday?

A. Yes, sir.

Q. And did you, on Tuesday, did you visit the Yards or any part, or the downtown station or any part of the Company property that you recall?

A. I visited Mr. Kirchner's office again.

Q. You went to Mr. Kirchner's office again?

A. Yes, sir.

Q. Who was with you this time?

A. Mr. Cunningham.

Q. Mr. Cunningham?

A. Yes, sir.

Q. Will you tell us the gist of your conversation with Mr. Kirchner there on the second occasion?

A. Well, on the second occasion it was virtually the same as the first. We again requested, or told him that in our opinion that if he would restore the outside hostler helpers jobs that the men would go back to work. He said he would again contact Louisville, it was still out of his hands.

And he did say that he wished that the men would go back to work, whether or not the jobs were restored. And Mr. Cunningam was—wanted the men to go back to work too.

Q. Did you do anything on Wednesday that you recall?

A. Yes, sir.

Q. What did you do?

A. Well, Tuesday and Wednesday both I had conferences at Judge Hare's request in his chambers.

Q. How long did that take? We are not going into that, but how long did that take?

A. It lasted a pretty good while.

Q. Then on Wednesday, did you go back to the Company's property on Wednesday at any time?

A. No, sir, not on Wednesday. Mr. Cunningham got in touch with Mr. Kirchner, or Mr. Kirchner got in touch with Mr. Cunningham, one of the two. And anyhow they decided to have another conference.

Mr. Simpson:

We object to what two different people aside from him decided.

The Court:

Sustained.

Q. Did you have any further contact with the Company officials on Wednesday?

A. I believe I was at your office when Mr. Cunningham called me and told me to meet him at the Frank Nelson Building, or meet him at the Molton Hotel, and we would go to the Frank Nelson Building for a conference with the L&N officials

Q. Did you go there and have a conference?

A. Yes, sir, we met up in Mr. Simpson's office.

Q. What officials were there at that time?

A. Well, Colonel Love, the gentleman that has been sitting here in the Courtroom all the week was there. Mr. Kirchner, he was there, Mr. Jack Davis, Assistant Director of Personnel was there.

Q. Were there any other officials of the Brotherhood there?

A. None other than Mr. Cunningham and myself.

Q. Mr. Cunningham and yourself were the only two that were there?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Will you tell us what transpired at that meeting there?

A. Well, we just tried to get together on how to get the men back to work, and Mr. Cunningham told them that he would use his good offices, or his good influence, or words to that effect, to get them back. That is about all that transpired here.

Q. Was this on Wednesday?

A. Yes, sir.

Q. About what time was this conference at the Frank Nelson Building?

A. It was around between 5:00 and 6:00 o'clock in the afternoon.

Q. After that conference, where did you go?

A. I went back to the Molton Hotel with Mr. Cunningham.

Q. And who did you see at the Molton Hotel?

A. Well, we saw several people there. They were gathering in Mr. Cunningham's room. Among the crowd was Mr. J. D. Price.

Q. Who is he?

A. He is Local Chairman for the BRT.

Q. That is what?

A. The roadmen, Brotherhood of Railroad trainmen, and Mr. E. H. Eager, he was acting in Mr. Lester Watkins absence, Watkins was in Louisville I understand. And there was, L. A. DuBose was there, W. C. Huckaby was there. There were some more people there, but I don't recall who it was.

Q. Was there anything discussed at the conference there between Mr. Cunningham and these other gentlemen that you have named?

A. Well, Mr. Cunningham told them what had taken place up there.

Mr. Simpson:

May it please the Court, I object to what happened in their conference. There doesn't seem to have been anybody connected with the Plaintiff in any official capacity there.

The Court:

I sustain the objection.

Q. Well, did the men go back to work that night?

A. Yes, sir, I understand they did.

Q. Did you instruct any of them to go back to work?

A. No, sir.
Q. You did not?
A. No, sir.
Q. And when did you go back to work?
A. I don't think I went back to work until Saturday.
Q. Until Saturday?
A. The following Saturday.

Mr. Pettus:
I believe that's all.

Cross Examination

By Mr. Simpson:
Q. Mr. Cunningham was the ranking Brotherhood of Locomotive Firemen and Enginemen, that is your Union, here on the ground, wasn't he?
A. Yes, sir, at that time.
Q. During that strike?
A. Yes, sir.
Q. He was next to Mr. Paschal in authority on the L&N?
A. Yes, sir.
Q. Among the L&N employees?
A. Well, among the firemen.
Q. Yes. I mean among the L&N employees that were firemen.
A. Yes, sir.
Q. Your Union?
A. He don't have anything to do with the other crafts.
Q. Well, he did that night, didn't he? Didn't he tell them up there—you told us Mr. DuBose was up there. What craft was he in?

Mr. Pettus:

We object to going into these things. You prevented me from going into this. He objected to my going into anything at the meeting.

The Court:

It was the question of conversation I think there.

Mr. Simpson:

I didn't want any self-serving declarations that they may have said to one another.

Mr. Taylor:

We object.

The Court:

Overruled.

Mr. Pettus:

We object on the ground that he didn't let us go into it.

Q. Who is Mr. DuBose that you have told us was up there?

A. A fireman.

Q. Who is Mr. Huckaby?

A. He is a fireman.

Q. Who was this first or second man you mentioned, Mr. Price?

A. Price was a conductor.

Q. He was a member of the Brotherhood of Railroad Trainmen, wasn't he?

A. Yes, sir, Local Chairman for the road men I understand.

Q. All right, who else was there?

A. E. H. Eager.

Q. E. H. Eager?

A. Yes, sir.

Q. Now, who else?

A. He was acting in Mr. Lester Watkins place.

Q. Mr. Watkins is what?

A. He is Local Chairman for the Brotherhood of Railroad Trainmen, for the switchmen, Yard men.

Q. Trainmen and switchmen?

A. And Yard men.

Q. Were there any other crafts represented up there?

A. There were some more people there. I don't know what crafts they were from.

Q. These other crafts were up there trying to get Mr. Cunningham to get the firemen to go back to work, weren't they?

A. I don't know what they were doing up there.

Q. You know that all of these other crafts were anxious to go back to work, and the switchmen were about to run over the pickets out there at the Hillside gate, and they were all up there trying to get Mr. Cunningham to get the firemen to go back to work so they could go back to work, weren't they?

A. I don't know anything about that.

Q. Anyway you know that that night Mr. Cunningham did get the firemen to go back to work in some way, didn't he?

A. I know that everybody went back to work that night.

Q. You know that after that conference with all of these people that you are telling us about with Mr. Cunningham, the firemen went back to work, didn't they?

A. Everybody went back to work.

Q. I asked you about the firemen.

A. Firemen and all the rest.

Q. Yes.

A. It was no good for the firemen to go back without the rest of them.

Mr. Simpson:

May it please the Court, I would rather the gentlemen would not argue the case, but let his lawyers argue it. I move to exclude his argument.

The Court:

That is excluded, gentlemen.

Q. Now then, there was not any other genereal officer of the Trainmen there, was there, except these Local Chairmen?

A. I don't know who those men were.

Q. You didn't see any of them there?

A. I don't know who those men were.

Q. I am asking you if you saw any general officers of the Trainmen coming in here from Louisville or anywhere else?

A. The only general officer I know of the Trainmen is Mr. N. E. Lane, and I didn't see him.

Mr. Simpson:

May it please the Court, I asked him a question, if he saw anybody there he knew to be a general officer of the Trainmen, and I would appreciate an answer.

Mr. Pettus:

He just answered it.

The Court:
Was Mr. Lane there?

The Witness:
No, sir, he was not there.

The Court:
Well, I sustain the objection then.

Q. Now then, did you see any general officer of any other of the Brotherhoods there except Mr. Cunningham?

A. I am not acquainted with them.

Q. Did you see anybody that you knew to be a general officer of any of the other Brotherhoods except Mr. Cunningham?

A. No, sir.

Q. All right. How long after that conference got together up there in Mr. Cunningham's room was it before the word went out that the work would be resumed?

A. I do not know.

Q. Now, you have been telling us about some conversations here with Mr. Kirchner. Mr. Kirchner now lives in and has been transferred to Louisville, hasn't he?

A. He has been transferred to Louisville. I don't know if he lives up there or not.

Q. Well, he lives there. You saw him up until last night sitting right there (indicating)?

A. Yes, sir.

Q. You know he is not here today, don't you?

A. Yes, sir, I know he is not here, I don't see him.

Q. Mr. Otts, you say Mr. Kirchner and you got together at 2:00 o'clock on Monday?

A. Yes, sir.

Q. And that you knew I was going to question you about that?

A. Yes, sir.

Q. And how did you know that?

A. Well, that's the pattern you have been following all morning.

Q. The pattern I have been following?

A. All through, yes, sir, yes, sir.

Q. Well, you know that you didn't know when you were examined on the 22nd of November, which was less than a month after this walkout occurred, you didn't know anything about any such meeting as that at that time, did you?

A. I told you I couldn't recall the events on that Monday. I also told you that I had—

Q. Did I ask you what else you told me? I asked you if you recalled that meeting at the time you were examined less than a month after that strike?

A. At that time I couldn't recall it.

Q. All right, sir. Now, you say you told Mr. Kirchner at this meeting that you say you had at 2:00 o'clock on Monday afternoon that if the hostler jobs were reestablished the men would go back to work?

A. No, sir, I didn't say that.

Q. I misunderstood you then. What did you tell us?

A. I told him it was my opinion that if the hostler, outside hostler helping jobs were reestablished that the men would go back to work.

Q. You also told him it was your opinion that the outside hostler helpers, that if they were not re-established, that the men would not go back to work, didn't you?

A. Yes, sir.

Q. And the outside hostler helpers jobs were in your organization?

A. Yes, sir, that's right.

Q. And you were down there representing those people at that time?

A. No, sir, I was not down there representing anybody. I was down there trying to get everybody back to work.

Q. You were Local Chairman?

A. I was Local Chairman.

Q. Well, after you told him that you didn't think they would go back to work unless the outside hostler helpers jobs were reestablished, what time did you leave Mr. Kirchner's office?

A. It was somewhere around 3:00 o'clock.

Q. On the afternoon of Monday?

A. Yes, sir.

Q. You tell us I believe that at this meeting on Friday night—Friday would have been the 20th day of October, wouldn't it?

A. No, sir.

Q. Wouldn't it?

A. It would have been the 21st.

Q. Friday would have been the 21st of October, wouldn't it?

A. Yes, sir.

Q. Sunday was the 23rd?

A. Yes, sir.

Q. Saturday was the 22nd?

A. Yes, sir.

Q. And Friday would have been the 21st, wouldn't it?

A. Yes, sir.

Q. This letter that you read here a while ago is dated the 20th, which would have been Thursday, wouldn't it?

A. Yes, sir.

Q. Now at this meeting on Friday night, the 21st, you or Mr. Lloyd, who was the Secretary of the Brotherhood meeting, read that letter?

A. Yes, sir, I believe Mr. Lloyd read it.

Q. Now this letter from Mr. Paschal was written to Mr. W. S. Schoel, Director of Personnel, Louisville & Nashville Railroad Company, Louisville, Kentucky, wasn't it?

A. Yes, sir.

Q. With a copy to you and a copy to Mr Lloyd?

A. Yes, sir.

Q. Now if that letter was written on Thursday, which would be October 20?

A. Yes, sir.

Q. It probably was recived by you here the next day, wasn't it?

A. That's right.

Q. It was probably received by everybody the next day?

A. Yes, sir, I imagine it was.

Q. It was probably received then on Friday the 21st?

A. Yes, sir.

Q. Had you replied to that letter prior to the following Sunday?

A. That letter didn't request a reply so far as I could see.

Q. My question is had you made any response to that letter before the next Sunday?

A. That letter was in response to my telephone call to Mr. Paschal, and didn't—

Q. Did you respond to the letter in any way?

A. No, sir.

Q. This letter was written to the Company because you had called Mr. Paschal about this abolition?

A. Yes, sir, that's right.

Q. And you got that letter. I am asking you if you made any reply to it, either on Saturday or Sunday?

A. No, sir.

Q. After you got it?

A. No, sir.

Q. Do you know whether Mr. Lloyd did? He was the Corresponding Secretary, wasn't he, or the Secretary?

A. I don't have any idea he did, because the letter doesn't require a reply.

Q. Well, you say you talked to Mr. Paschal some time the next week?

A. Yes, sir.

Q. About this letter?

A. Yes, sir.

Q. What time next week did you talk to him?

A. I don't recall what time it was.

Q. You talked to Mr. Paschal on Wednesday, didn't you?

A. I talked to him Wednesday or Thursday, I don't know which.

Q. Wednesday or Thursday?

A. Yes, sir.

Q. And Mr. Paschal, you told the jury a while ago, told you that the L&N just ignored this letter?

A. Yes, sir.

Q. Well, the strike came on Sunday, didn't it?

A. Well—

Q. It didn't come on the next Wednesday or Thursday?

A. That's right.

Q. Mr. Paschal was handling this thing with the L&N in the due and regular routine for handling Union grievances, wasn't he?

A. Yes, sir.

Q. And his letter was due to go into the Louisville & Nashville Railroad Company, and they got it you say Friday, probably on Friday?

A. That's right, yes, sir.

Q. Now Saturday is usually a Railroad holiday, isn't it?

A. I don't know, its not a holiday for me.

Q. I know, its not a holiday for a lot of us, but usually Saturday is not a full work day for a Railroad office, is it? The clerks and everybody are short on Saturday?

A. I don't know.

Q. All right. Sunday is not usually a full work day?

A. I don't know about that.

Q. For correspondence. And the strike happened Sunday night, hadn't it?

A. The walkout happened Sunday night, yes, sir.

Q. We won't argue about what it was, but you are telling this jury that the L&N Railroad was ignoring this protest because some time the following Wednesday or Thursday Mr. Paschal told you that the L&N was ignoring it?

A. Yes, sir.

Q. Although the strike had happened the previous Sunday?

A. Well, that—I didn't say anything about the walkout, I said that the L&N Railroad Company had ignored it.

Q. Could they have done anything about it before Sunday?

A. Certainly they could have done something about it.

Q. What could they have done?

A. Well, am I going to be at liberty to explain what they could have done?

Q. Could they have gotten a letter back to Mr. Paschal and to you and these other people after they got this letter probably on Friday? Would you expect the L&N to decide what they were going to do?

A. Yes, sir.

Q. And get a reply back before Sunday night?

A. If you will allow me to tell what they could have done I will do it.

Q. I am just asking you. You stated they were ignoring this letter, that the L&N Railroad Company ignored this letter. You stated that for the purpose of creating an impression here then that the L&N Railroad was highhanded about it.

I will ask you whether or not on Saturday morning around 5:00 o'clock you were having picket signs printed or painted or made arangements to have picket signs printed the day after this letter was written?

A. No, sir.

Q. On Saturday morning?

A. No, sir.

Q. The second day after, that is Saturday morning?

A. No, sir.

Q. How is that?

A. I remember something about it. I don't remember what day it was or anything like that.

Q. You remember it was Saturday morning, you just looked on your book and saw you were called for work at 5:00 o'clock on Saturday morning, didn't you?

A. Yes, sir, but I didn't say I had a conference with these men on Saturday morning.

Q. You heard Mr. Reese Thomas, your fellow Defendant here, say that you did, didn't you?

A. Yes, sir, I heard him say it.

Q. Is your recollection contrary to his about it?

A. I told you I didn't remember it, I don't recall when it was, when it took place.

Q. You heard Mr. Sexton say it too, didn't you?

A. Yes, sir.

Q. And you heard Mr McCormack--I mean Mr. McCutcheon, he hasn't testified, but Mr. McCutcheon was also present, wasn't he?

A. I don't know whether he was or not.

Q. So you, if this was an orderly way for Mr. Paschal to handle this, through channels, you were making preparations to handle it outside of channels as early as Saturday morning at 5:00 o'clock, weren't you?

A. No, sir.

Q. No? And yet you are telling this jury the L&N Railroad ignored this thing because you heard Mr. Paschal say that, on the following Wednesday or Thursday after the strike had already happened and cleared up—

Mr. Pettus:

We object to that, argument.

The Court:

I sustain the objection. Gentlemen, we are going to take a 20 minute recess.

(A short recess was had.)

Q. Now, Mr. Otts, when you got in Sunday afternoon you didn't take time in the washroom to change your clothes, you just went in and probably washed your hands, and then went right on out. Now, when you came off the L&N's property that Sunday afternoon after getting in from your run, did you come out the gate that is right at Rex's there?

A. Yes, sir.

Q. That is where your washroom is, right inside of that gate, isn't it?

A. Yes, sir.

Q. You went right out, right across the street there is Rex's, isn't it?

A. Yes, sir.

Q. As you went across the street there do you remember whether you went in Rex's and got a Coca-Cola or anything?

A. No, sir, I don't think I did.

Q. You just got in your car and went right straight on to Mr. Parker's place?

A. Yes, sir.

Q. Where was your car parked?

A. It was over there by the side of Rex's.

Q. Over there by the side of Rex's?

A. Yes, sir.

Q. Now as you went over there to get in your car did you see Mr. Fleming there?

A. I don't know if he was there or not.

Q. So you don't know whether Mr. Fleming saw you there or not, do you, that Sunday afternoon?

A. I know he didn't see me at 3:00 o'clock at Rex's.

Q. I don't care about what time it was. I say whether he saw you there that afternoon as you went over there to get in your car by Rex's?

A. I don't know whether he was there or not.

Q. I say you don't know whether he was there or not, and he may have seen you over there because you went right by Rex's and got in your car, didn't you?

A. Now, if he was there he could have seen me.

Q. That's what I say. Now when you got to the meeting, the meeting hadn't started, had it?

A. I don't know, sir.

Q. Well, you remember you went in there, and there were still some of them out in the Yard, wasn't there?

A. Some of them were outside, and some of them were inside.

Q. Before the meeting started they all got inside, didn't they?

A. I don't know about that now.

Q. Do you know whether Mr. Fleming was there or came up later, when you got there?

A. I think he was already there.

Q. You think he was already there?

A. Yes, sir.

Q. Do you remember distinctly whether Mr. Fleming was there when you got there or not?

A. No, sir, I don't.

Q. Oh, you don't, do you?

A. No, sir.

Q. So you don't know whether Mr. Fleming saw you at Rex's and also saw you at Parker's that afternoon, do you?

A. I don't know where Mr. Fleming saw me.

Q. You know he saw you at Parker's don't you?

A. He may have seen me. I don't know whether he saw me or not.

Q. Well, you were there, weren't you?

A. Yes, sir, I was there.

Q. And Mr. Fleming was there, wasn't he?

A. Yes, sir, I believe he was.

Q. All right. Now you say that you didn't take a vote on whether to strike or not strike there that night or that afternoon, that Sunday afternoon at Mr. Parker's?

A. No, sir, I didn't take any vote.

Q. Your memory is very clear about that now, isn't it?

A. Well, I think I would have remembered it if I had done it.

Q. You would have been more likely to remember it twenty-nine days after it happened than you would now, wouldn't you?

A. Well, I recall something about when I went to see Mr. Kirchner, after that was taken.

Q. That has come back to your mind now since Mr. Kirchner is not here, that's pretty clear to you?

A. That didn't have anything to do with it.

Q. It didn't have a thing in the world to do with it, the fact that Mr. Kirchner has gone home?

A. No, sir.

Q. All right. Now you also remember, Mr. Otts, that you testified here twenty-nine days after this thing is supposed to have occurred, in that pretrial hearing at that time, and you have read this deposition, haven't you?

A. Yes, sir, I have read it.

Q. You know every word that is in it almost, don't you?

A. No, sir, I don't.

Q. How many times have you read it over?

A. I read it a couple of times.

Q. A couple of times, right recently too, haven't you, getting ready for the trial, haven't you?
A. Yes, sir.

Mr. Pettus:
What page?

Mr. Simpson:
I want to refer him briefly to page 38, a little bit on page 38:

"Q. You testified you didn't on that occasion at that meeting Sunday afternoon, October 23, 1955 call for a show of hands on the question whether or not the matter would be handled through channels or otherwise?
"A. I don't recall having a question and a show of hands.
"Q. Are you saying you didn't do that?
"A. I'll say I don't recall.
"Q. You do not want to say you didn't do it?
"A. I don't recall any such occasion on my part.
"Q. Your best judgment is that you hadn't—your best judgment is if you hadn't you would recall it?"

Then your attorney objected, and another question:

"Q. You know of nothing that causes your memory to fail on that matter?
"A. No, sir."

So your recollection at that time was that you couldn't say positively one way or the other about that?

Mr. Pettus:
We object to that "positively." That's not in anything that he has read.

The Court:
Overruled.

Mr. Pettus:
We except.

A. To the best of my knowledge—
Q. I'll just put it this way, these questions were asked you and these answers made, weren't they, Mr. Otts?
A. Yes, sir.
Q. At that time. All right. Now during the course of that strike or work stoppage you talked to Decatur and Montgomery by long-distance telephone, didn't you?
A. Yes, sir.
Q. Who did you talk to in Montgomery?
A. Mr. Byram called me from Montgomery.
Q. Byram?
A. Yes, sir.
Q. Byram, he is one of the men mentioned in connection with Mr. Hicks, and Mr. Byram?
A. Yes, sir.
Q. In the testimony here the other day, wasn't it?
A. Yes, sir.
Q. That is the Byram you are talking about?
A. Yes, sir.
Q. He is a fireman here that lives at Birmingham?
A. Yes, sir.
Q. He is a fireman, a member of your Local?

A. Yes, sir, that's right.
Q. How many times did you talk to Mr. Byram?
A. One time.
Q. Do you remember what morning that was?
A. No, sir, I don't.
Q. It was during the strike, was it?
A. Some time during the stoppage.
Q. During the stoppage?
A. Stoppage, yes, sir.
Q. As a matter of fact it was either Monday night or early Tuesday morning, wasn't it?
A. I don't remember when it was, Mr. Simpson
Q. Now, do you remember talking to—or who do you remember talking to in Decatur?
A. Well, Mr. Barker called me from Decatur.
Q. Who is Mr. Barker?
A. He is a hostler up there.
Q. A hostler?
A. Yes, sir.
Q. He was in your Brotherhood, was he not?
A. No, sir.
Q. A member of your Brotherhood?
A. No, sir.
Q. He was not?
A. No, sir.
Q. All right, who else called you?
A. Mr. Scoggins.
Q. Mr. Scoggins?
A. Yes, sir.
Q. Who is Mr. Scoggins?
A. He is a fireman.
Q. He is a member of your Brotherhood, isn't he?
A. Sometimes he is, sometimes he's not.
Q. He's kind of in and out, is he?
A. Yes, sir.

Q. Now when Scoggins, when did you talk to Mr. Scoggins?

A. Some time during that period, I couldn't tell you what day it was.

Q. As a matter of fact you talked to him Monday night, didn't you?

A. I told you I didn't know when I talked to Scoggins.

Q. I thought maybe it would refresh your recollection.

A. No, sir, I don't remember.

Q. You can't know?

A. No, sir.

Q. Did you talk to Mr. Dismukes any?

A. No, sir.

Q. Did you talk to either of the three men that left here on Monday afternoon and went to Decatur? You have heard testimony about that, didn't you?

A. Are you referring to Barnett, Pennington and Bentley?

Q. Mr. Red Pennington, yes, Mr. Barnett and Mr. Bentley.

A. No, sir, I didn't talk to them.

Q. Mr. Barnett was a former Decatur man, wasn't he, Bruce Barnett?

A. So far as I know he never lived in Decatur.

Q. Well, didn't you hear him testify he used to work up there?

A. The only work he has ever done up there is extra work from the Extra Board here in Boyles.

Q. He knew a good many people in the Decatur Yards?

A. I don't know how many he knew.

Q. Mr. Bentley was originally from Decatur, wasn't he?

A. I think he used to live up there.

Q. He used to live up there?

A. Yes, sir.

Q. Related to a good many people that work for the L&N Railroad?

A. I couldn't tell you about that.

Q. Or some people that work for the L&N Railroad?

A. I don't know.

Q. Who selected those two men that were acquainted in Decatur to go with Red Pennington to close up Decatur?

A. I can't tell you.

Q. You can't tell us?

A. No, sir.

Mr. Simpson:

I believe that's all I want to ask Mr. Otts, Your Honor.

Mr. Pettus:

Your Honor, I have a question I would like to ask Mr. Otts.

Re-Direct Examination.

By Mr. Pettus:

Q. Mr. Otts, did you yourself commit any act of violence during the entire work stoppage?

A. No, sir.

Q. Did you instruct anybody else to commit any act of violence?

A. No, sir.

Q. Or did you instruct anybody else to intimidate any employees of the L&N in any way?

A. No, sir.

Q. I will ask you whether you had any knowledge of any act of violence being committed during the work stoppage?

A. No, sir.

Mr. Pettus:
That's all.

The Court:
All right, come down.

Mr. Simpson:
That's all.

(Witness excused.)

Mr. Pettus:
Mr. McCutcheon.

C. L. McCUTCHEON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. C. L. McCutcheon.

Q. What do you do now Mr. McCutcheon?

A. I am employed at the Lone Star Cement Corporation.

Q. In October, of 1955, where were you employed?

A. L&N Railroad.

Q. What was your job in October, 1955, in the early part of it?

A. Outside hostler helper.

Q. Were you one of the men whose jobs were abolished by that notice?

A. I was.

Q. Of October 18?

A. Yes, sir.

Q. Did you receive a copy of that notice?

A. Yes, sir.

Q. And what labor organization were you a member of?

A. BofLF&E.

Q. You were in October, 1955 a member of that organization?

A. Yes, sir.

Q. Did you attend a meeting of your Brotherhood on Friday, October 21?

A. I did.

Q. Where was that meeting held?

A. At the Masonic Hall in Inglenook.

Q. Was this letter here that has been offered as one of the Defendants' exhibits that was written by Mr. Paschal, was that letter read at that meeting?

A. I believe it was.

Q. After the meeting did you have any talk with anyone?

A. Yes, sir, several of us had a conversation downstairs.

Q. Downstairs?

A. Yes, sir.

Q. Where were you standing when that conversation took place?

A. Well, we were there on the sidewalk or next to the curb, between the sidewalk and the curb.

Q. Do you remember who was present?

A. Myself, George Lloyd, Bill Grissom, I believe Fleming was there, Mr. Parker. That's about all I'm sure of right now.

Q. Mr. Fleming also did hostler helping work, did he?

A. When we were off, he would fill in, yes, sir.

Q. When you were off?

A. At times. If he wasn't available, they usually put a laborer on.

Q. What was the discussion at that meeting held outside of your hall there?

A. Well, after we came downstairs and got down on the sidewalk, the first thing I can remember about it, pertaining to it, was Mr. Parker invited us to come to his house at 4:30 Sunday evening and have a general discussion. He said pass the word around, tell all the boys you know to meet up at my house.

Q. Now at any time prior to that meeting at Mr. Parker's house did you have a conversation with Mr. R. A. Sutterlin, l-i-n?

A. No, sir, I'm most certain I didn't. You say before I went to Mr. Parker's house, or before the Friday night meeting?

Q. I'm talking about before Mr. Parker's meeting.

A. Oh, yes, sir.

Q. You had had a conversation with Mr. Sutterlin?

A. I am not sure whether I said anything.

Q. Were you present?

A. I was present when a conversation was taking place.

Q. Who else was present?

A. Us three is all.

Q. Who is the other man?

A. Mr. Thomas.

Q. Reese Thomas?

A. A. R. Thomas and myself.

Q. A. R. Thomas and Sutterlin. Tell us what was said there.

A. We had been over to the North Yard and swapped engines, carried an engine back to the roundhouse, and coming back up the northbound freight lead, and Engineer Parrot, Fireman Sutterlin were on the spot. They called me and said, on the spot, the track next to this northbound freight lead, and I noticed Sutterlin leaned out of the window and dropped his arm. That is a stop signal on the railroad. And Mr. Thomas eased up even with the engine and stopped.

Sutterlin came off of their engine, came up in the cab of the engine we were on, and said he had heard that there was to be a meeting at Parker's house.

We verified it, Mr. Thomas and myself. I don't know whether I said anything or not, but it was verified.

Q. Was there anything else said in that conversation that you recall?

A. That's all I can recall.

Q. Did Mr. Sutterlin turn up at the meeting?

A. Yes, sir, he was there.

Q. Prior to the time of the meeting at Mr. Parker's house did you have any conversation with Mr. Otts and Mr. Thomas with reference to signs?

A. Yes, sir.

Q. Where did that occur?

A. That was Friday night—it would have been Saturday morning, around 4:00 o'clock I imagine, a. m., we had a discussion. Mr. Otts seemed to feel that the General Chairman would authorize a strike about

those jobs being abolished. He wanted to be prepared in case.

Q. Did you have anything to do with obtaining the signs?

A. No, sir, I didn't go to the sign place. I never have been there.

Q. Did you ever see any signs displayed during the work stoppage?

A. I haven't saw one of them et.

Q. You haven't seen one of them yet?

A. No, sir.

Q. Now, when did you get off the job Sunday?

A. Sunday?

Q. Saturday. You got off Saturday, didn't you?

A. And I worked Saturday night.

Q. You worked Saturday night?

A. I was off at 7:00 o'clock.

Q. Was your next job assignment the last shift on Sunday night?

A. Third shift Sunday night.

Q. Third shift Sunday night?

A. Yes, sir.

Q. You went to the Parker meeting?

A. Yes, sir.

Q. The meeting at Parker's house, didn't you?

A. Yes, sir.

Q. Did you go with anyone?

A. Yes, Mr. Thomas came by and picked me up.

Q. What time did you arrive there?

A. At the meeting?

Q. Yes.

A. I think we got there right about 4:30, real close to that.

Q. Where was the meeting held, what part of the house?

A. A big open basement under, beneath Parker's house.

Q. Do you remember the discussion that occurred at the meeting?

A. Not very much. It was mighty disorganized, and noisy, men standing around in small groups, talking among themselves.

Q. Do you remember, did you have anything to say?

A. Yes, I believe I did say a few words.

Q. What did you say?

A. I told the men, what few was there next to me, whether it was one or two or three, I don't know how many heard it, that I appreciated the men meeting there on our behalf, and doing what they could do for us. And I explained that I had labor seniority in the shop that I could roll back on, and Mr. Dougherty, the second shift hostler helper, had labor seniority, and Mr. Grissom could draw his compensation while his job was, the abolishment was being handled through the channels.

Q. What do you mean by labor seniority, Mr. McCutcheon?

A. When I was hired in for railroading there I was 18 years old, in 1939. I was hired in as a laborer. I maintained my labor seniority.

Q. Now, does that mean if your hostler helper job was abolished, then you rolled back into a labor job, is that right?

A. Yes, my seniority entitled me to do it.

Q. It did entitle you to do that?

A. Yes.

Q. Now, do you remember anything that Mr. Otts or Mr. Kennedy or Mr. Brown or anybody else at the meeting said?

A. Mr. Otts explained that, the best I grasped it, that he was handling the matter, or started handling it with Mr. Paschal in Louisville. And I did hear Kennedy say a few words, start to say something, and seemed to be disturbed. There was a fellow there that I would hate to say, he was feeling pretty good, and he seemed to be bothered about this guy being there. And this fellow kept butting in, something about the 58 day club, just wanting to know what 58 day club meeting he was in.

Q. There was some man there that was asking about a 58 day club meeting?

A. Yes, sir.

Q. Do you know who that was?

A. I didn't know his full name at the time. I have learned that it was a pipe fitter named Andy Stuart.

Q. What condition was he in?

A. He was feeling good.

Q. Feeling good?

A. Yes.

Q. Did anybody else have anything to say there?

A. This Kennedy started to say something, and I asked him to speak out loud, I wanted to hear what he had to say. I knew he was an official with the Union, and I wanted to hear what he had to say. But all I heard him say was "I talked to Paschal."

Q. That's all you heard?

A. He seemed to get disturbed at this fellow there by him, he kept butting in the conversation, and I saw him leaving.

Q. Then Mr. Kennedy left, did he?

A. Yes, sir.

Q. While you were at the meeting was there any show of hands or any voting that you saw on any question?

A. There was not.

Q. Was there anybody in charge of the meeting so far as you could see?

A. No, sir, no one person seemed to take charge of it.

Q. How long did you stay there?

A. I would guess around 35 minutes, maybe 40.

Q. Did you then leave the meeting?

A. Yes, sir.

Q. What did you do after you left the meeting?

A. Mr. Thomas carried me home and—

Q. Were you in Mr. Thomas' car?

A. Yes, sir.

Q. Did you stay at home?

A. I did until around 8:00 o'clock.

Q. Then where did you go?

A. I went to the roundhouse.

Q. Is the roundhouse the one that is there near the Rex's place?

A. The washroom, yes, sir.

Q. About what time did you go into the roundhouse?

A. Oh, it was, it must have been around 8:15, I wouldn't think any later than 8:15.

Q. Did you see anyone when you went in?

A. After we got inside the entrance there I looked towards the turntable, and I saw a group of men down around the turntable. I couldn't identify any of them.

Q. Did you see anyone in the vicinity of where you were in the roundhouse?

A. After I got inside of the washroom, Mr. Jordan was in his little office. I could see him.

Q. Did you do anything while you were there?

A. I removed my clothes.

Q. You removed your clothes?

A. Yes, sir.

Q. Where did you remove your clothes from?

A. My locker.

Q. Then where did you go?

A. I came back outside and asked Mr. Thomas if he was ready to go, or I told him I was ready to go, and he was standing on the outside talking to this Engine Dispatcher. The Engine Dispatcher was still inside with his door open, and Mr. Thomas was standing on the steps in front of his office.

Q. Had Mr. Thomas gone into the premises there with you?

A. Yes, sir.

Q. Had he been with you all the time you were in there?

A. Yes, sir.

Q. Or had you all split up?

A. All the time except what few minutes I was in the washroom.

Q. Then did you leave the premises together?

A. Yes, sir.

Q. Where did you go then?

A. We came back around the south end of the building, and back across to the highway.

Q. Where did you go then, where was your destination?

A. Into the cafe.

Q. That is Rex's Cafe?

A. Yes, sir.

Q. How long did you stay there?

A. I spent the night there, in that vicinity.

Q. Spent the night at the Rex's Cafe?

A. At the cafe.

Q. Did you spend the night inside of the cafe or were you in just the general vicinity of the cafe?

A. Inside and outside, I walked across the highway there once, after I saw the place deserted, I crossed the highway, the railroad seemed to be deserted at th roundhouse.

Q. Were you down in the vicinity of Rex's where you could observe any indications of a work stoppage?

A. I sure was.

Q. What did you see that indicated that?

A. I saw the two roundhouse foremen come out, and assistant foreman, assistant roundhouse foreman, got in his automobile, he was driving, and Mr. Crow, the second shift roundhouse foreman was sitting beside him. They came out, up Vanderbult Road, coming towards Birmingham.

Maybe five or ten minutes later the Engine Dispatcher, Jordan, came across the highway and announced to the crowd, it seemed like, just announced to the body of the people out there that everybody had left but him, and he was gone too.

Q. Were there many men around Rex's Barbecue that evening?

A. That night?

Q. That night.

A. Yes, sir.

Q. Were most of them railroad men so far as you could tell?

A. Yes, sir.

Q. Did you spend any time there at—there has been mentioned a footbridge, something of that sort mentioned in some of the testimony. Did you spend any time at the footbridge there?

A. I didn't go to the footbridge, I walked across the highway. I don't imagine I got 5 feet from the highway, and looked inside after Jordan had come across and said what he did. I saw the roundhouse

foreman go by, saw the lights go off, and the place seemed to be deserted, and I walked over and looked to see if I could see anybody, seeing if I could see anything inside moving.

Q. How long did you stay there at that place?

A. Just a very short time.

Q. A short time?

A. I don't think over 30 minutes.

Q. Did you spend the night out at that footbridge?

A. No, sir.

Q. Do you know Mr. Sexton?

A. Yes, sir.

Q. Did you have any conversation with him at or about where that footbridge is located that evening?

A. I did not.

Q. You did not?

A. No, sir.

Q. Did you have any conversation with Mr. Sexton in which you related anything that occurred at the meeting at the Parker house?

A. No, sir.

Q. You did not?

A. No, sir.

Q. At that time were you a friend of Mr. Sexton?

A. Well, I never have—I don't reckon I have any enemies, but I never have mixed with him socially.

Q. You say you spent the night there at Rex's Barbecue?

A. Yes, sir.

Q. What time did you leave? Where did you go when you left?

A. I went home the next morning.

Q. That is on Monday morning?

A. Yes, sir.

Q. And did you do some sleeping?

A. On Monday morning? Yes, I went right to bed, right away.

Q. Just tell us what you did on Monday?

A. I stayed around home all day. How many hours I slept I couldn't recall, but I don't believe I left my home all day Monday.

Q. You don't believe you left your home on Monday?

A. Until that night.

Q. On Tuesday do you recall any assembly or meeting at Ed Weldon's house?

A. I don't know whether you would class it as a meeting or not. I went to his home.

Q. You went to Weldon's home?

A. Yes, sir.

Q. Do you know about what time you got there?

A. It was in the early part of the evening. It must have been right after noon.

Q. After lunch?

A. Yes, sir.

Q. When you got there did you see any one you knew?

A. Mr. Weldon and several of the boys. I believe Mr. Albert Walker, Engineer Walker was there.

Q. How long did you stay there?

A. Not over five minutes.

Q. You stayed there five minutes?

A. Yes, sir.

Q. And was there anything said or discussed that you recall while you were there?

A. Mr. Myrick, Fireman Myrick came after me to go to Mr. Weldon's home, he told me that there was a few of them up there, a few men at Mr. Weldon's home, and they were expecting a—

Mr. Simpson:
We object to any conversation between themselves.

The Court:
Sustained.

Q. In other words, you got there and then just didn't stay, is that right?
A. No, sir, I didn't stay, not over five minutes I don't think.
Q. Where did you go after you left Mr. Weldon's home?
A. I rode from his home to my home with two men that were there, Mr. C. E. Purkey, and Mr. Gray. That's the reason I left as soon as I did, they passed my home going to their home in their car, and I knew I could ride with them.
Q. Did you stay at your home the rest of the day?
A. Tuesday? I believe I was served a subpoena or two in the evening.
Q. You did what?
A. Served a subpoena, and I carried it over to Mr. Otts house that night. I wanted to get his advice on me getting a lawyer.
Q. Was that the subpoena in this case here?
A. Yes, sir.
Q. And did you do anything else that day that you recall, or go anywhere else?
A. That is Tuesday?
Q. Yes, sir.
A. I don't believe I did.
Q. You don't think you did?
A. I spent the night at home.
Q. How about Wednesday, what did you do on Wednesday?

A. I carried the subpoena down to the cafe, Rex's Cafe, to see if any of the others, the men that were involved in this suit, that was named on my subpoena with me, Defendants, were there. I wanted them to know.

Mr. Simpson:
We object to the undisclosed state of mind.

The Court:
Sustained.

Mr. Simpson:
The purpose.

The Court:
That is excluded, gentlemen.

Q. How long did you stay at Rex's that day?
A. I don't believe I was there over an hour.
Q. Where did you go after you left Rex's?
A. I went home. And then Mr. Kennedy called me and said he was coming, Mr. Pettus, was coming to your office, and wanted to know if I wanted to ride with him, to come with him. I told him yes. I believe it was right around 3:00 or maybe 4:00 o'clock. He came by my home and picked me up, and we came to your office.
Q. Was that the day that the work stoppage stopped, I mean they resumed work that day?
A. They resumed work that night.
Q. They resumed work that night?
A. Yes, sir.
Q. Did you work that night?

A. No, sir. I didn't have a job to go to that night.

Q. You did work some more for the L&N, did you not?

A. I went to work Thursday morning.

Q. You went to work Thursday morning?

A. Yes, sir.

Q. Now, what was the job classification that you had Thursday morning when you went to work?

A. I had placed myself on the Labor Extra Board, and the foreman, Hollingsworth, had assigned me to the first shift vacancy, three weeks vacation vacancy, as laborer.

Q. And did you work as a laborer?

A. Yes, sir.

Q. And were the duties you performed as laborer the same that you had done as a hostler helper?

Mr. Simpson:
We object to that.

A. No, sir.

Q. They were different?

The Court:
Overruled.

Q. What is that?

The Court:
Overruled.

Mr. Pettus:
Yes, sir.

Q. What was your answer?

The Court:
He said they were not.

A. Would you ask the question again, Mr. Pettus?
Q. I wanted to know whether your duties as laborer were the same duties that you had performed as a hostler helper.
A. They were not the same.
Q. They were not the same?
A. No, sir.
Q. Who was performing the hostler helper duties that you had previously done?

Mr. Simpson:
We object to that as immaterial to this case.

The Court:
Sustained.

Q. What had been your duties as a hostler helper?

Mr. Simpson:
We object to that as immaterial.

Mr. Gibson:
Repetitious.

The Court:
It is repetitious. I sustain the objection.

Mr. Pettus:
We except. We haven't had this witness who was involved as one of the hostler helpers. We offer to show by him what his duties were.

Q. While you were a laborer, or at any time after this work stoppage occurred, as a laborer did you at any time perform the same or substantially the same duties that you had performed as a hostler helper before the work stoppage?

Mr. Simpson:
We object to that as leading, and repetitious.

The Court:
I sustain the objection.

Mr. Pettus:
We except and offer to show that they were.

Q. Now, Mr. McCutcheon, did you commit any act of violence during this work stoppage?
A. No, sir, I did not.
Q. And did you instruct anybody else to commit any act of violence?
A. I did not.
Q. Did you intimidate any other employees of the L&N to keep them from working?
A. No, sir.
Q. Did you instruct anybody else to keep any employees of the L&N from working?
A. No, sir.
Q. Have you known of any acts of violence that occurred during this work stoppage?
A. I have not.
Q. You have not approved of any acts of violence that occurred?

Mr. Simpson:
We object to that, state of mind.

Q. During the work stoppage?

The Court:
Sustained.

Q. Mr. McCutcheon, did you perform services as a laborer around the roundhouse?
A. I was assigned, after my job was abolished, I was assigned to go to the roundhouse at one time and work a vacancy.
Q. What did you do there?

Mr. Simpson:
We object to that.

A. I performed the same—

The Court:
I overrule the objection.

A. I performed the same duties that I always had performed for years as an outside hostler helper there at the roundhouse, working as a laborer at the labor rate of pay, only I was not allowed to go with the hostler, outside hostler, from the roundhouse to the Yard, or to Birmingham, or anywhere he is supposed to go. He left by himself from the roundhouse.

Mr. Pettus:
That's all.

Cross Examination.

By Mr. Gibson:
Q. Of course, the hostler picked up a herder as soon as he got out of the roundhouse area, didn't he?

A. After he got up in the Yard, near the Yard Office.

Q. Yes, sir.

A. Where the lead is.

Q. Now, you have been here throughout the trial, have you not?

A. Yes, sir.

Q. You heard Mr. Sexton testify that he observed you picketing at the footbridge across from Rex's about 11:00 o'clock Sunday night?

A. I heard him.

Q. And you heard R. E. Thomas testify?

Mr. Pettus:

We object to repeating all of the testimony. If he has any questions, all right, but just repeating the testimony we object to.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. You heard R. E. Thomas testify that he saw you at that place at 9:40 on Sunday night?

A. Yes, sir.

Q. You tell the jury that both of those statements were untrue?

A. Them men were mistaken.

Q. You were not there?

A. No, sir.

Q. Now, you spent the entire night at Rex's Barbecue Sunday night, didn't you?

A. Inside and outside, yes, sir, there around the building.

Q. Do you do that pretty regularly?

A. No, sir.

Q. What was your business at Rex's Barbecue all night Sunday night?

A. Curiosity.

Q. When this was going on?

A. Curiosity.

Q. Curiosity?

A. Yes, sir.

Q. Tell the jury what you did that night to satisfy that curiosity?

A. I stayed there and watched, observed everything that was going on that I could see.

Q. In Rex's Barbecue?

A. In the front. Its just like looking from here a few feet across the highway, to the railroad property.

Q. What were you curious about?

A. Well, its big news when the Railroad shuts down and the place is deserted that employs hundreds of men. That is something to observe.

Q. You wanted to find out what caused it, didn't you?

A. I didn't feel like I caused it.

Q. Now, answer the question, please, sir. You wanted to find out what the thing was all about, didn't you?

A. I wouldn't think so.

Q. Sir?

A. I wouldn't think so.

Q. Well, what were you curious about, tell us? Tell us what you were curious about, Mr. McCutcheon.

A. I was curious about the people leaving their jobs.

Q. About the reason they left?

A. Sir?

Q. About the reason they left.

A. That among—why they were not--why they had left, yes, sir.

Q. You told us you went over into the Yard about 8:15 Sunday night?

A. Yes, sir. I didn't say in the Yard, I said over in the roundhouse, washhouse.

Q. When I use the term "Yard" I mean the Boyles premises. You were inside the Company property that night?

A. Yes, sir.

Q. About 8:15?

A. Yes, sir.

Q. And your purpose in going over there was to get a bundle of clothes out of your locker?

A. I was moving, I was laid off that night and I was moving my location of work Monday morning.

Q. You had known for some time that you would be laid off that night?

A. After the bulletin was posted.

Q. Several days?

A. Yes, sir, on Wednesday or Thursday, I am not sure, prior to Sunday.

Q. And you had been in the washroom around about 3:00 o'clock that same afternoon?

A. Yes, sir.

Q. Sunday afternoon?

A. I went over there Sunday afternoon, yes, sir.

Q. You didn't go over there after your clothes until after the meeting at Shorty Parker's house, you and Reese Thomas?

A. I got the clothes at 8:15 or 8:20 that night.

Q. With the work stoppage going on, you were scared to go in the Yard, weren't you?

A. I was what?

Q. You were scared to go in the Yard with a work stoppage going on, weren't you?

A. Its against my principles to work in a labor dispute. But it is just general knowledge to me that, to be afraid to participate in work in a labor dispute when it is going on.

Q. You would be afraid, wouldn't you, you would be afraid that somebody would physically harm you, wouldn't you?

A. It is possible.

Q. If you tried to work during a labor dispute?

A. That's possible, yes, sir.

Q. And you would be afraid somebody would injure your family if you tried to work during a labor dispute, wouldn't you?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

Sustained.

Q. You were afraid that some one would physically harm you or injure your family at that time?

Mr. Pettus:

We object to that.

Q. If you tried to go in and work, weren't you?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
It cails foi a mental operation. We except.

A. It would be possible.
Q. Sir?
A. It is possible.
Q. You have heard of things like that before, haven't you?

Mr. Pettus:
We object to that.

The Court:
I sustain the objection.

Mr. Gibson:
You can come down.

The Court:
You are excused. Come down.

(Witness excused.)

Mr Pettus:
Mr. J. M. Brown.

J. M. BROWN, JR., called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. J. M. Brown, Jr.

Q. Where do you live?

A. 124 South 68th Street.

Q. You are one of the Defendants in the case?

A. Yes, sir.

Q. And by whom are you employed?

A. L&N Railroad.

Q. What is your job?

A. Fireman.

Q. Fireman?

A. Yes, sir.

Q. Were you a fireman in October, 1955?

A. Yes, sir.

Q. Are you also qualified as an engineer?

A. Yes, sir.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. In October, 1955 were you?

A. Yes, sir.

Q. Well, what is the name of that organization?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. Did you hold an office in that organization in October, 1955?

A. Yes, sir.

Q. What office did you hold?

A. President.

Q. Now, did you attend this meeting at the Parker house?

A. Yes, sir.

Q. Who had first mentioned the meeting to you, if you recall?

A. I couldn't recall. It seems to me like I found out about it first Sunday afternoon when I went over to the roundhouse.

Q. You found out about it at the roundhouse?

A. Yes, sir.

Q. But you did attend the meeting?

A. Yes, sir.

Q. What was the subject of the meeting?

A. Well, it was, as I understood, it was to discuss the abolishment of the hostler helpers jobs.

Q. Did you take part in the discussion there of it?

A. Not too much.

Q. Did you have anything to say?

A. Yes, sir.

Q. What did you say at the meeting?

A. My prime purpose for going there was to see J. B. Otts.

Mr. Simpson:

We object to the purpose, an undisclosed state of mind.

The Court:

Sustained.

Q. You just have to say what you said there.

A. Well, to see Otts and ask him what had been done about that, the bulletin that had been posted.

Q. Did you ask Otts what had been done about it?

A Yes, sir.

Q. And did he make a reply?

A. Yes, sir, he said he had handled it with Mr. Paschal, and I believe that he had talked to Mr. Quiggins about it.

Q. Did you make any other statement at that meeting with regard to handling it with Mr. Quiggins?

A. No, sir. I asked him if he had talked with anyone else besides Mr. Quiggins, if he talked to Mr. Kirchner.

Q. What was his reply to that?

A. He said that he had discussed it with the officials, and that was as far as he had gone with it, as well as I understood then.

Q. Do you recall anything that any other of the men at the meeting said, Mr. Kennedy or Mr. Thomas or anyone?

A. No. I overheard Mr. Kennedy make a remark something about he had been in touch with Jake Paschal, and as I understand it, it was something about handling it through the proper channels. Now, his exact words, I couldn't say.

Q. Was there any discussion among the others along those lines, anything said in answer to Mr. Kennedy's remarks?

A. Well, not that I know. After I talked to Mr. Otts I wasn't too interested in what was going on right there at that part.

Q. Was there any show of hands on any question at the meeting that you observed?

A. I didn't see any.

Q. You didn't see any?

A. No.

Q. Was there any compilation of names for any purpose at the meeting?

A. No, there was some one handed me a piece of paper and a pencil and asked me to write a few names down for them.

Q. Do you know who that was?

A. No, I couldn't say.

Q. Do you know what you did with the paper after you finished with it?

A. No, sir, I handed it to some one. I don't recall who it was, I was talking to some one at the time, and I didn't pay too much attention to it.

Q. About what time was the meeting over, Mr. Brown?

A. I would say around 5:00 o'clock or a little after.

Q. What did you do after the meeting?

A. I went home.

Q. After the meeting was over, did you have a telephone conversation with any official of the Railroad?

A. Well, after I got home I thought I would take it on myself to—I hadn't had the question answered that I had asked at the meeting, the reason I didn't get an answer on it the one I didn't know yet, so I called Mr. Quiggins to ask him the reason for the abolishment of the hostler helpers jobs. I hadn't ever heard until that time why he had done it.

Q. Did you talk with Mr. Quiggins then?

A. Well, I assumed it was Mr. Quiggins. I called his phone, I looked in the phone book and got his address and phone number and called him up, and he said—he identified himself as Mr. Quiggins.

Q. What did he say?

A. Well, I asked him about it, and he says, well, he says 'Well, I'll tell you just how it stands." He says "I had"—some time before that, I don't recall how long, the Official Federal Inspector had been

there inspecting the locomotives, and he says "While he was here he complained so about the condition about the Diesels, the engines, that it had gotten to Louisville", and he had to do something about it, he had to make a change somewhere, and he told me he abolished those jobs and put laborers on them so that when the occasion came about that there was any movements to be made that the helper, it would be a laborer then, could wipe the engines off.

Q. About what time did that conversation take place with Mr. Quiggins, if you recall?

A. I think it was about 6:10 or 20, something like that.

Q. That was on the night of the work stoppage?

A. Yes, sir.

Q. Now, the laborers, however, they had performed a different job from the hostler helpers, didn't they?

A. You mean at the roundhouse?

Q. At the roundhouse, and the outside hostler helpers job was different from a laborer's job?

Mr. Gibson:
We object to that.

A. Well, they used laborers on the inside hostlers job.

The Court:
Overruled.

Mr. Gibson:
We except.

Q. And how did that differ from the outside hostler helper job?

A. Well, there was no difference, because the outside hostler helper worked the same as the inside hostler helper, within the roundhouse limits.

Q. Within the roundhouse limits?

A. Yes, sir.

Q. But when he got outside of the roundhouse limits, his job was different?

A. Well, the outside hostler helper used to go with the engine all the way to town or wherever he had to take them.

Q. Did the outside hostler helper have duties with regard to protection of the left side of the engine?

A. Well, I would say it was—

Mr. Simpson:
We object to that.

A. —practical for him to be looking out for that side.

The Court:
Overruled.

Mr. Simpson:
We except.

Q. Now, Mr. Brown, after your conversation with Mr. Quiggins on Sunday—I will ask you to identify Mr. Quiggins again. Who was he?

A. Sir?

Q. Who was Mr. Quiggins?

A. Master Mechanic.

Q. Master Mechanic at the Boyles Yard?

A. Yes, sir.

Q. After your conversation with him—did you have a conversation with him while you were at home?

A. With who?

Q. I mean the telephone conversation with Mr. Quiggins, were you at home when you called him?

A. Oh, yes, sir.

Q. After that did you stay at home or did you leave?

A. Well, I was there until—I couldn't say exactly what time. My wife and I went to a drive-in theater.

Q. Went to a drive-in theater?

A. Yes, sir.

Q. After you got through with the drive-in theater where did you go?

A. Well, we rode back over by Rex's Barbecue.

Q. Was your wife with you?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, it wasn't too long, I imagine 15 or 20 minutes, as well as I recall.

Q. Then you left Rex's Barbecue, and where did you go?

A. Home.

Q. Now, Mr. Brown, on Monday, Tuesday, and Wednesday will you give us an account of what you did on those days?

A. I couldn't recall offhand, but I believe Mr. Dougherty said he saw me over by Rex's Monday morning. If he said so, its so. I was over there every day at some time, I wouldn't say exactly what time, I didn't keep a record of it.

Q. But you would visit Rex's during the day?

A. Some time during the day.

Q. Did you spend much time there?

A. Not too much, to see if I could report to work or not, and I would go back home. Maybe I would stay around and drink a cup of coffee or something.

Q. When did you go back to work?

A. I believe, as well as I remember, I reported back Friday morning.

Q. Friday morning?

A. Yes, sir.

Q. Now, during the days that the work stoppage was in effect were you paid for those days?

A. No, sir.

Q. And you didn't work during those days?

A. I didn't expect any.

Q. Did you yourself commit any act of violence or intimidation against any employee of the L&N?

A. No, sir.

Q. Did you authorize anybody else to commit any act of violence or intimidation against the employees of the L&N?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Gibson:

Q. Mr. Brown, Mr. Thomas had something to say at the meeting at Shorty Parker's house, didn't he?

A. I don't recall that he did. Almost everybody did.

Q. Almost everybody did?

A. Yes, sir, at one time or another.

Q. Of course, you don't remember what anybody said except Kennedy?

A. No, I remember what Mr. Otts said.

Q. Did he address that to the meeting or to you?

A. No, it was to me personally.

Q. Did anybody address the meeting, gathered together as a group?

A. Well, almost everybody there just discussed among themselves. I don't say that there was a general taking over or anything like that.

Q. Well, part of the time they did discuss it in a group, didn't they?

A. Well, there was I guess three or four or five groups around there.

Q. I said part of the time they did, or almost all, discussed it together in a group, didn't they?

A. No, I couldn't say that.

Q. You remember giving your deposition down here, don't you, back here on November 18, 1955?

A. Yes, sir.

Q. Sir?

A. Yes, sir. —

Q. I will ask you whether or not at that time you were asked these questions and made these answers—

Mr. Pettus:

What page?

Mr. Gibson:

—which I will read. Page 17, bottom of the page:

"Q. Were you divided up in small groups in various parts of the room, discussing the matters you discussed, or were you generally gathered together as we are here?

"A. Well, a few were discussing it, not all in one group, they were at times.

'Q. And there were times when they were all what you might say discussing it?"

Do you recall that?

A. I guess I did at that time, yes, sir.

Q. Now, you were the President of the Local at that time?

A. Yes, sir.

Q. Did you get up and express your opinion to the members who had elected you as their President?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Now, you didn't lay off after the meeting, did you?

A. No, sir.

Q. You were on a call status, that's the kind of job you had?

A. Yes, sir, I worked the board, but I wasn't due to be called.

Q. You had no shift to report to?

A. No, sir, no regular shift.

Q. No regular assignment?

A. No, sir.

Q. Now, this list of names that you put down in the meeting, you wrote that on a piece of paper with a pencil, didn't you?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. And you were where in the room, or in the garage with reference to the door then?

A. Well, I couldn't say. I believe I was standing by a post, as well as I remember.

Q. And there were men gathered around shile you were writing?

A. No, sir, there was only twc or three or maybe four at that time.

Q. Only two or three, maybe four?

A. Yes, sir.

Q. Who were they?

A. I couldn't say offhand. I was discussing something with several of them.

Q. I don't want you to testify anything offhand, Mr. Brown. We would like for you to tell us what your recollection is about it.

A. Well, I was talking to some one, and I think some one handed me a paper, a piece of paper or pencil, and in an offhand way says "Write these names down for me", and I didn't pay any attention to it, so far as the importance of it or anything like that.

Q. You can't tell us who handed you the paper?

A. No, sir, I was talking to these other fellows.

Q. You can't tell us who you gave the paper to when you finished with the names?

A. I didn't pay any attention to it.

Q You can't tell us the name of a single man you wrote on that piece of paper, can you?

A. No, sir, I don't recall that I can.

Q. When you left the meeting everybody there was in agreement about what they were going to do to help reestablish the hostler helpers jobs, weren't they, so far as you could tell?

A. I don't know whether they were all in agreement or not. I imagine that they were, so far as I knew.

Q. I call your attention to these questions and these answers from your deposition, in the pretrial deposition.

Mr. Pettus:
What page is that?

Mr. Gibson:
Page 20, bottom of the page:

"Q. Did you hear anyone discuss the question of whether the group should band itself together to assist these men to get their jobs back?
"A. Well, I don't know if you would say banded together. It was sort of agreed that we would do what we could to help reestablish the jobs.
"Q. And that you understood to take in everybody there?

"A. Well, not only there, but everybody outside too, the rest of the men.
"Q. You mean the rest of the firemen?
'A. The rest of the firemen."

Were those questions asked you and did you make those answers?

A. I imagine I did.
Q. Now, you knew that a strike in that stage of the situation which Otts had described to you, while it was being handled with the General Chairman, would be an illegal strike, didn't you, Mr. Brown?

Mr. Pettus:
We object to that, incompetent, irrelevant, and immaterial.

The Court:
Sustained.

Q. You knew the proper procedure?
A. Yes, sir.
Q. And you knew the improper procedure to handle a grievance?
A. Almost any way outside of the proper way would be improper.
Q. You knew the proper way was then being processed, didn't you?
A. Yes, sir.

Mr. Gibson:
You can come down. Come down.

Mr. Pettus:
Wait a minute. I have one further thing here.

Re-Direct Examination.

By Mr. Pettus:
Q. Mr. Brown, reading further at page 21 the question was asked you there:

"Q. Who is the first person who suggested the course of action?", and your answer was: "I don't know offhand, but I suggested it myself. I don't know whether I was the first one or not, of contacting local officials, and laying our cards on the table and telling them just how we felt about it, and if they could

see our point of view, maybe we could get them to go along with us and bear a little weight on Louisville."

A. Yes, sir.
Q. Did you also make that statement?
A. That was my intention.

Mr. Pettus:
All right, come down.

Re-Cross Examination.

By Mr. Gibson:
Q. You heard Mr. Anderson testify you were at that meeting at Ed Weldon's Tuesday, didn't you?
A. Yes, sir.
Q. That's correct, is it?
A. Yes, sir.
Q. All right, come down.
A. May I, if the Court please, the question of Mr. Weldon's meeting came up there. I—

Mr. Gibson:
Now, Your Honor, we object to the witness making a voluntary statement.

Mr. Pettus:
I will ask him.

Re-Direct Examination.

By Mr. Pettus:
Q. What occurred at Ed Weldon's meeting, if you were there?

A. Well, I felt that that ought to be answered because it has been brought up. I was there, and I said that, at the time before when you questioned me, that I didn't remember being every place I had been. Well, It hadn't crossed my mind until I heard it here in the Courtroom that I had been there. I hadn't even thought about it again.

Q. Do you know what occurred at Ed Weldon's meeting?

A. Yes, sir, as well as I observed, Mr. Weldon had some of us there to sort of get in touch with the hotel—

Mr. Simpson:
We object to the purpose.

A. —to get the men back to work.

The Court:
I sustain the objection.

Mr. Simpson:
And we move to exclude that.

The Court:
It is excluded, gentlemen. All right, you can come down, Mr. Brown.

(Witness excused.)

Mr. Pettus:
Your Honor at this time we want to offer the questions and answers to certain interrogatories that we propounded to the Plaintiff, and I will get Mr. Byrd to read the questions, and I will read the answers.

Mr. Simpson:
We object to anything less than all going in, may it please the Court.

Mr. Pettus:
What is that?

Mr. Simpson:
We object to less than all going in.

The Court:
If he is offering them, of course, you can offer—

Mr. Pettus:
You can offer them in whole or in part, just like a deposition, may it please the Court. I mean it is part of the rule, the same rule applies to a deposition.

The Court:
They are entitled to offer them all if you offer part of them, I understand.

Mr. Pettus:
We don't concede that, Your Honor, but I mean we are going to offer this part of them.

Mr. Simpson:
We would like to offer the whole.

Mr. Smith:
What part of the rule says that, if you don't mind my asking?

The Court:
These are interrogatories.

Mr. Simpson:
I think we might get this clear.

Mr. Gibson:
We object to particular parts, we object to offering just parts.

The Court:
All right.

Mr. Pettus:
I want 1-C with reference to J. M. Brown, Jr.

"1. State fully and in detail with respect to the Defendant J. M. Brown, Jr.:

"(c) Did said Defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the Plaintiff not to perform their duties for the Plaintiff?"

"1(c) Plaintiff is not able to answer this interrogatory categorically at this time. Individually, personally and directly, this particular Defendant is not now known to have used any threats of force or violence. The means used by this Defendant was that of participating in the act of calling a strike, in the course of which persons aiding and abetting him and his co-conspirators ordered employees to leave and remain away from their work, using the fear and threat of violence created by previous terrorism, as well as direct threats and overt acts of violence.

"3(a) Did the said Defendant, J. M. Brown, Jr., personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"3(a) So far as Plaintiff now knows, this Defendant did not individually commit any act of violence, but planned and agreed with others that they would stop the Plaintiff's business from operating, and in the course of carrying out this plan and agreement acts of violence were committed by the co-conspirators of this Defendant and others acting in concert with him.

"4. State fully and in detail with respect to the Defendant, J. B. Otts, Jr.: (c) Did said Defendant at any time referred to in the complaint as amended, use words and/or perform acts and/or use other means of threats of force and/or violence to cause other employees of the Plaintiff not to perform their duties for the Plaintiff?"

"4(c) Plaintiff does not at this time know of any personal or individual threats or violence which J. B. Otts, Jr. committed, except such as were implicit in his presence at the Boyles Yard on the night of October 23, 1955, with a large group of persons gathered at and around the entrances to the Yard, engaged in halting the work of Plaintiff's employees, causing them to leave its premises and preventing others from going into its premises to work."

"9(a) Did the said Defendant, H. K. Parker, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?

"9(a) In so far as this interrogatory relates to the individual and personal acts of this Defendant as distinguished from those of his co-conspirators and those abetting him and them, Plaintiff can at this time only state that Parker participated in the actual stopping of work at Boyles on October 23, 1955, and thereafter assisted pickets by his presence at or about an entrance to Plaintiff's property on at least two other nights during the strike or work stoppage, as above stated."

"(b) If so, then state the time, date and place and the names and addresses of persons present, the name of the person or identity of the property involved in each said alleged act of violence so participated in or committed by the said Defendant."

"9(b) As before stated, the intimidation exercised by Parker and others affected and involved, and effectively prevented some 2,000 persons, members of all crafts as well as officials of Plaintiff, from carrying out their duties for a period of approximately three days and three nights. No individual was directl subjected to physical violence at the hands of H. K. Parker so far as Plaintiff is presently able to state."

"12(a) Did the said Defendant, C. L. McCutcheon, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"12(a) So far as Plaintiff presently knows, this Defendant did not individually or directly participate in any act of violence during the period covered by the

stoppage of its business, but assisted in informing employees that a strike was in progress, and participated in picketing during the period of the 'wildcat' strike, in the carrying out of which acts of violence were committed and threats voiced by co-conspirators, named agents and abettors of this Defendant, and the other conspirators."

"15(a) Did the said Defendant, W. L. Grissom, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"15(a) So far as Plaintiff presently knows, this Defendant did not individually or directly participate in any act of violence, but assisted in informing employees that a strike was in progress, and participated in picketing and watching during the period of the 'wildcat' strike, in the carrying out of which strike acts of violence were committed by co-conspirators, agents and abettors of this Defendant."

"21(a) Did the said Defendant, H. E. Southerland, personally participate in or commit any act of violence in connection with the 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"21(a) So far as Plaintiff presently knows this Defendant did not directly and as an individual commit any act of violence, but was a member of the group which formed and carried out the conspiracy, was present with the crowd when the employees at Boyles were caused to leave their jobs on Sunday, October 23, 1955, at the beginning of the shutdown of Plain-

tiff's business, in the course of which co-conspirators, agents and abettors of this Defendant carried out acts of violence and other intimidating conduct as described above."

"24(a) Did the said Defendant, M. L. Hall, personally participate in or commit any act of violence in connection with 'total cessation' of Plaintiff's operation' as alleged in the amended complaint?"

"24(a) So far as Plaintiff presently knows, M. L. Hall did not, as an individual, personally commit any act of violence but he assisted the other conspirators in causing other employees to leave their jobs and to remain away from them throughout the period of the 'wildcat' strike caused by them, and in the progress of the same various acts of violence were committed and threats of violence made by co-conspirators, agents and abettors of this Defendant and the other conspirators named."

"27(a) Did the said Defendant, R. A. Sutterlin, personally participate in or commit any act of violence in connection with 'total cessation of Plaintiff's operation' as alleged in the amended complaint?"

"27(a) So far as Plaintiff knows at this time he did not personally and individually commit or participate in any act of violence. At the present time, Plaintiff is not sufficiently informed to give a categorical answer to this interrogatory, being only informed that this Defendant was a member of the group which met at H. K. Parker's home and thereafter failed to work during the period of the strike."

Mr. Pettus:

Now we offer those interrogatories that we have read.

Mr. Simpson:

We think they all should go before the jury. We offer all the rest, Your Honor.

Mr. Pettus:

We object to all the rest, may it please the Court, as incompetent, irrelevant, and immaterial, self-serving declarations.

The Court:

Let me have the rule there just a minute.

Rule 4 says where part of a deposition—and the same rule applies to interrogatories, under the rules, —if only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced; and any party may introduce any other parts.

So it appears that if you want to introduce any other parts of the interrogatories you are entitled to have them introduced.

Mr. Simpson:

We would like to introduce the whole interrogatories, that is all of the other parts, the parts that he didn't offer.

The Court:

All right, it will be admitted in evidence.

Mr. Pettus:

We object and except to the Court's ruling.

A Juror:

Are the answers he has given there a reply from the L&N Railroad?

The Court:

Yes. I didn't explain to you gentlemen, you have been hearing about depositions. Of course, that is where testimony of the party is taken.

Now, interrogatories are where, in advance of the trial, either party has a right to file questions, they call them interrogatories, to the other side, and those interrogatories are, or the answers to those interrogatories, can be offered in evidence by the party propounding them or asking the questions, or he can offer part of them.

But I have read you Rule 4, which says if he offers part, the other side can offer the other part.

Mr. Taylor:

If the Court please, I represent three parties in this case, and the interrogatories are not offered by those parties. I understand the parties referred to in these interrogatories,—Your Honor didn't mean to say the interrogatories referring to these three parties who didn't offer them—

The Court:

Were your parties referred to in the answers to the interrogatories?

Mr. Taylor:

I believe they were, but the interrogatories were not filed on behalf of my three parties, nor were the answers given in behalf of my three parties.

Mr. Simpson:
Questions were asked with respect to them.

The Court:
Who asked the questions?

Mr. Gibson:
Both counsel asked questions.

Mr. Pettus:
The Defendants I represent, Mr. Brown, Mr. Otts, Mr. Parker, Mr. Grissom, Mr. Weldon, Mr. Southerland, Mr. Hall, and Mr. Sutterlin, these are the Defendants I represented at that time, we propounded interrogatories to the Plaintiff.

The Court:
Were the answers given with respect to any of your clients? Hand me that sheet under there.

Mr. Pettus:
They were answered with respect to his clients.

Mr. Taylor:
Yes, that is correct, Your Honor, the answers that were given, some of them were given with reference to my clients, even though I did not propound the questions.

The Court:
You represent Letchman, Baum, and Thomas?

Mr. Taylor:
That's correct.

The Court:
Now, who propounded those interrogatories?

Mr. Pettis:
I did.

The Court:
Did you ask about those three Defendants?

Mr. Pettus:
I asked about everybody that is a Defendant in the case.

Mr. Gibson:
And there was no objection to the answers, that they were not responsive, Your Honor.

Mr. Smith:
Mr. Taylor never objected to the questions when Mr. Pettus propounded them.

The Court:
Well, that's right, they were not objected to at the time. I think the objection comes too late.

Mr. Taylor:
I am objecting to what they offer, not what Mr. Pettus has read. I wasn't in position to object to those. I object to them being offered in the trial of the case. I didn't propound the questions, and I didn't offer them in evidence.

The Court:
Well, they are in. Now with respect to these three men that Mr. Taylor represents, of course, if those

interrogatories were propounded by some one that did not represent them at the time, I don't think it would be binding on these three Defendants.

Mr. Simpson:

It seems to me Your Honor it would be like this, if I am in a lawsuit and other people are involved in the same lawsuit, although I don't represent all of them, I can ask what the other folks did, whether they are in the lawsuit or not, I can ask what bystanders did, and it would be the duty of the person that the questions were asked of to respond to that.

The Court:

Well, gentlemen, Mr. Taylor objects to the interrogatories, the portions or parts that you offered, as being applicable to his three clients.

Mr. Pettus:

Yes, sir.

The Court:

I am going to rule that they are not applicable, because he personally has not offered on behalf of his clients any part of the interrogatories.

Mr. Simpson:

I think that is fair, Your Honor.

The Court:

So gentlemen you will not consider the remaining portions of the answers. Now they have not been read to you, and I don't know whether they will be or not, but Mr. Simpson has offered them, but you will not consider those with respect to the three Defendants

Thomas, Baum, and Letchman, because they did not offer any part of the interrogatories to begin with.

Is there anything further from the Defendants in this case?

Mr. Pettus:

Your Honor, we have subpoenaed some records, we subpoenaed them Monday morning, I thought the case would probably go over to then. If there is going to be any more evidence we would like the opportunity to offer that additional information that we have subpoenaed. We just ask the Court's indulgence if there is going to be any more evidence received, rebuttal or otherwise. It will just be formal evidence, and Your Honor will rule on it, and it will either be admitted or not. It will not take long, in any event.

The Court:

Well, will there be some additional evidence?

Mr. Simpson:

Not as the evidence now stands.

Mr. Gibson:

I don't think so.

The Court:

We are not going to be able to finish the case, and I won't ask either party to close this afternoon, because you might want to tie up the odds and ends.

Mr. Taylor:

Right.

The Court:

Gentlemen, we are going to recess until 10:00 o'clock Monday morning. I am sorry we can't finish the case, but we can't keep you here over the week end and wear ourselves out and the Court out, and everybody else, to come back here on Saturday. And so, be back Monday morning.

I want to caution you particularly about talking to anybody about the case or among yourselves or with anybody, and don't let anybody approach you about it. It would be your duty to advise the Court, if anybody did.

So, be back Monday morning at 10:00 o'clock and we will finish the case Monday, if nothing happens.

(Whereupon, at 4:30 p. m. an adjournment was taken until 10:00 a. m., Monday, October 1, 1956.)

Monday, October 1, 1956,
10:00 A. M.

The Court:

All right, gentlemen, we are ready to proceed.

Mr. Taylor:

Call Mr. Davis, please.

TOMMY E. DAVIS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. Tommy E. Davis.

Q. By whom are you employed, Mr. Davis?

A. L&N Railroad.

Q. Were you so employed by the L&N on October 23, 1955?

A. I was, sir.

Q. What was the nature of your employment at that time?

A. Hostler.

Q. Are you a member of any labor organization?

A. I beg your pardon, sir?

Q. Were you a member of any labor organization with the L&N at that time?

A. Firemen, yes, sir.

Q. Firemen's Organization?

A. Yes, sir.

Q. Now, Mr. Davis, do you recall the work stoppage that occurred last October?

A. Yes, sir.

Q. Please state to the jury and the Court, if you will, whether or not you worked on the Sunday on which that work stoppage occurred?

A. I went to work at 3:00 o'clock, sir.

Q. What time did you get off?

A. I went across the bridge at the engineers and firemen's washroom at 9:15.

Q. What was the occasion of your leaving Mr. Davis?

A. Every body else was leaving, and the lights was being turned off, and I left.

Q. Where were you on the Yard when you started out of the premises of the L&N on that date?

A. At the roundhouse.

Q. You were at the roundhouse?

A. Yes, sir.

Q. Do you know Mr. H. M. Baum?

A. I do, sir.

Q. How long have you known him?

A. Ever since I have been a fireman for the L&N he has—or ever since he has been a fireman with the L&N.

Q. Do you see him frequently?

A. Yes, sir.

Q. First, let me ask you this, did you go in the Yard office of the L&N Railroad on Sunday night, October 23?

A. I did not.

Q. Before you left there—excuse me?

A. I did not.

Q. Did you see Baum, Mr. H. M. Baum?

A. No, sir.

Q. On the premises of the L&N Railroad on Sunday night, October 23?

A. No, sir.

Q. Did you go in any building on the premises of the L&N Railroad on Sunday night, October 23, with a club or a stick in your hand?

A. I did not.

Q. Did you see Mr. Ben Mitchell on Sunday night, October 23?

A. I did not.

Q. Did you take any part at all in this work stoppage?

A. No, sir.

Q. And when did you next go back to work?

A. Well, I think they went back Wednesday night, if I am not too—and I didn't go back until Thursday.

Q. If Mr. Ben Mitchell says he saw you in the Yard office on Sunday night, is he correct in that statement?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Mr. Taylor:

I believe that's all. Now, you answer these gentlemen's questions, Mr. Davis.

Cross Examination.

By Mr. Simpson:

Q. You were in the Yard on the night this strike started, and went out at 9:15 you say?

A. Not in the Yard, at the roundhouse.

Q. The roundhouse is on the L&N premises?

A. It is a different place, and it is a different outfit. The Yard is the Yard, and the roundhouse is the roundhouse.

Q. They are both on the premises of the L&N Company?

A. Sure.

Q. Inside of the fence?

A. Yes, sir.

Q. All right, you were in there until 9:15 on that night the strike started?

A. That's right.

Q. And who did you go out with?

A. No one.

Q. Who did you walk out with?

A. No one.

Q. By yourself?

A. By myself.

Q. Had everybody else gone out ahead of you?

A. I don't know. I had to get my clothes. I went and got my clothes and left.

Q. Were you out in the Yard at the time people went through there hollering "Labor trouble, get out of here; clear the Yard"?

A. No, I wasn't. I imagine I was putting up the engine. That was my duty.

Q. When that business of cleaning out the Yard was going on, you were probably putting up an engine?

A. That's right.

Q. You took no part in the strike?

A. I did not.

Q. And you haven't been sued, have you?

A. No, I haven't.

Mr. Simpson:

All right, that's all.

Mr. Taylor:

May this witness be excused, Your Honor?

Mr. Simpson:

He can as far as we are concerned.

The Court:
You may be excused.

(Witness excused.)

L. O. PHILLIPS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you state your name?
A. L. O. Phillips.
Q. Where do you live?
A. At 221 Elder Street.
Q. You are going to have to speak out so everybody can hear you.
A. All right. 221 Elder Street, Birmingham.
Q. What do you do, Mr. Phillips?
A. Switchman.
Q. For the L&N Railroad?
A. For the L&N Railroad.
Q. Were you a switchman in October, 1955?
A. Yes, sir.
Q. Do you recall the night of Sunday, October 23, 1955, when the work stoppage occurred at Boyles?
A. Yes, sir, I do.
Q. Did you go on the Railroad Company property that night yourself?
A. Yes, sir, I did.
Q. At what time did you go on there?
A. Well, it was around five minutes of 11:00.
Q. About five minutes of 11:00?

A. Yes, sir.
Q. Where did you enter the property?
A. Well, we call it the cab track over there, going in the Yard.
Q. About how far is that from Rex's Barbecue?
A. I would say around 500 feet, maybe a little more or a little less.
Q. When you went on the property where did you go?
A. Went over to the shack, to work.
Q. Was it quiet in there?
A. Pardon me?
Q. Was it quiet.
A. Yes, it was quiet, there was nothing going on.
Q. How long did you stay there?
A. I was in there around 10 minutes I guess.
Q. Around 10 minutes?
A. Yes.
Q. All right.
A. A few minutes after the first time, nobody showed up and I left.
Q. When nobody showed up you left?
A. Yes, sir.
Q. Had anybody stopped you from going in?
A. No, I didn't see anyone.
Q. Did you see anyone inside there?
A. I saw some one, I don't remember just who it was, but I asked him what the trouble was. He said there was no work tonight.

Mr. Simpson:
We object to a conversation between him and some stranger, and move to exclude it.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

The Court:
I exclude it, gentlemen.

Q. Did you leave then?
A. Yes, sir.
Q. Where did you go then?
A. Went home.
Q. You went home then?
A. Yes, sir.
Q. When did you go back to work, Mr. Phillips?
A. I don't remember just how long it lasted, but as soon as it was over, I found out that it was over, they were going back to work, I went back too.

Mr. Pettus:
All right. Answer their questions.

Cross Examination.

By Mr. Simpson:
Q. Mr. Phillips, where did you say you went on the L&N property that night?
A. Sir?
Q. The name of the entrance?
A. The cab track.
Q. I didn't catch it.
A. We call it the cab track.
Q. The cab track?
A. Yes, sir.

Q. All right.

A. That's what I call it, yes, sir.

Q. That's not the same as the two bridges there opposite Rex's?

A. No, sir.

Q. You didn't try to go in at the bridge right opposite Rex's, where the little footbridge is across there, or where the automobile bridge is across there?

A. No.

Q. Opposite Rex's, did you?

A. No, not the particular place there.

Q. Well, you saw people around those places, didn't you?

A. Well, there is always men out there around out there where they were.

Q. You saw men standing around there at the end of those bridges that night, didn't you?

A. Yes, sir.

Q. You went down nearly 200 yards away to what you call the cab path?

A. Yes, sir.

Q. That's not a very much used place, is it?

A. Well, there is two crews that use it.

Q. Two crews that use it?

A. Yes, sir.

Q. Now, the L&N Yards there at Boyles are about how long from end-to-end?

A. I would say about a mile or a mile and a quarter.

Q. About a mile or a mile and a quarter?

A. Yes, sir.

Q. About how wide at the widest point?

A. Maybe a quarter of a mile.

Q. About a quarter of a mile?

A. Yes, sir.

Q. On that night when that strike started there were lots of cars in there, weren't there?

A. Well, I don't recall a whole lot larger crowd gathered there than usual.

Q. I don't mean people, I am talking about cars in the Yard, railroad cars.

A. There is always a lot of cars.

Q. A lot of cars, filled with merchandise and property of various kinds?

A. There is always a lot of cars in there.

Q. Mr. Phillips did you go to any of the regular gates of entrance into the L&N property, to the roundhouse gate, to the Yard Office gate, Master Mechanic's gate, to the powerhouse gate, during the course of that strike?

A. No, sir.

Q. You didn't have anything to do with the strike, did you?

A. No, sir.

Mr. Simpson:
That's all.

Mr. Pettus:
Just one question.

Re-Direct Examination.

By Mr. Pettus:

Q. Mr. Phillips, you didn't try to go to any entry except the entrance where the cab track is, where you actually went in, did you?

A. That's the only one I went to.

Q. That's the only one you went to?

A. Yes, sir.

Q. And nobody stopped you from going in or coming out?

Mr. Simpson:

We object to that as repetition.

A. I went in and come out—

The Court:

Sustained.

A. —the same place.

Mr. Pettus:

That's enough. Thank you. Come down.

(Witness excused.)

JAMES WILLIAM JOHNSON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your full name, please, sir?

A. James William Johnson.

Q. You are going to have to speak up so all of these gentlemen can hear you.

A. James William Johnson.

Q. Are you employed on the L&N Railroad, Mr. Johnson?

A. Yes, sir.

Q. Were you also employed by the L&N Railroad Company back in October, of 1955?

A. Yes, sir.

Q. Are you sometimes referred to as "Jody"?

A. Yes, sir.

Q. By nickname?

A. That's right.

Q. Does your father also work for the L&N Railroad?

A. Yes, sir.

Q. Does he also have the same nickname of "Jody"?

A. Yes, sir.

Q. Do your friends oftentimes refer to you as "Little Jody"?

A. That's right, yes, sir.

Q. Now, Mr. Johnson, do you recall the work stoppage which occurred in October, of 1955?

A. Yes, sir.

Q. Do you recall whether or not you worked on the Sunday that that work stoppage occurred?

A. Yes, sir, I did.

Q. When, if you remember? Did you work that day or that night?

A. I was working that night, second shift.

Q. At what time would your duties normally terminate on the second shift of that Sunday night?

A. 11:00 o'clock.

Q. At 11:00 o'clock?

A. Yes, sir.

Q. Now, Mr. Johnson, where was your residence on October 23, 1955?

A. Decatur, that is my home. I was staying here with my daddy at that time.

Q. What time did you leave the L&N premises on Sunday night?

A. I think about 9:30.

Q. Did anybody tell you to leave or order you to leave?

A. No, sir.

Q. Were there other people leaving at about that time?

A. Yes, sir.

Q. Now, Mr. Johnson, where did you go when you left the premises of the L&N Railroad Sunday night?

A. Rex's Cafe.

Q. How long did you stay at Rex's?

A. Until about 11:00 or 11:30.

Q. Where did you go then, sir?

A. To Decatur.

Q. Were you at the Master Mechanic's gate of the Boyles Yard of the L&N Railroad in Birmingham, Alabama, in the vicinity of noon on Monday, the 24th of October?

A. No, sir, I was not.

Q. Do you know where you were at that time?

A. Decatur.

Q. Do you know Mr. Reese Thomas?

A. Yes, sir.

Q. Do you know Mr. Letchman?

A. Yes, sir.

Q. Do you know Mr. Ben Mitchell?

A. Just when I see him.

Q. You do know him by sight?

A. Yes, sir.

Q. Did you see Mr. Ben Mitchell Monday at or about 12:00 o'clock, October 24?

A. No, sir, I did not.

Q. Did you see Mr. Reese Thomas?

A. No, sir.

Q. Monday at about 12:00 o'clock, October 24?

A. No, sir.

Q. Or did you see Mr. Letchman at that time?

A. No, I did not.

Q. I believe you stated that,—or I will ask you if you know where you were at about noon on Monday?

Mr. Simpson:

I object to that, repetition.

A. I was at home in Decatur.

Mr. Taylor:

I wasn't sure that I recalled.

The Court:

Overruled.

Q. During the time that this work stoppage occurred did you belong to any labor organization?

A. Yes, sir.

Q. What was the organization you belonged to?

A. I belonged to the Engineers and Firemen.

Q. You belong to both the Engineers and Firemen?

A. Yes, sir.

Q. One further question, Mr. Johnson. Were you scared when you left the premises of the L&N Railroad on Sunday night?

A. Well, I wasn't scared, but I didn't want to get into anything.

Mr. Simpson:

We object to his argument. He has answered the question.

The Court:

I sustain the objection.

Q. Did you take any part in this work stoppage while it occurred?

A. No, sir, no, sir, I didn't.

Mr. Taylor:

I believe that's all. Now, answer these gentlemen's questions.

Cross Examination.

By Mr. Simpson:

Q. You say you were not at the Master Mechanic's gate when Mr. Ben Mitchell and Mr. Woelde went in to see about some livestock, perishables and livestock at about noon on Monday?

A. No, sir, I was not.

Q. Do you know who were in those two cars that were parked there, one on each side of that gate at that time?

A. No, sir, because I wasn't down there. I didn't see any cars, I wasn't there.

Q. You were not there?

A. No, sir.

Q. You know Mr. C. S. Hawkins, don't you?

A. Yes, sir.

Q. Do you know who the man was that was sitting in Mr. Hawkins car there talking to him at that gate at that time?

A. No, sir.

Q. That wasn't you?

A. No, sir.

Q. Do you have any idea who it was?

A. No, sir, I wasn't here, I didn't see.

Mr. Taylor:

Speak up, they didn't hear you when you said you weren't there.

Q. You do know Mr. Reese Thomas, and Mr. Barnett, and Mr. Hawkins were there?

A. No, sir, I don't know it.

Q. You don't know who the other man sitting in Mr. Hawkins car was as they were parked there, one on each side of that gate, about noon on Monday?

A. No, sir.

Q. If anybody mistook the man for you, then they were mistaken, were they?

A. Yes, sir.

Q. You had no part in this strike?

A. No, sir.

Mr. Simpson:

That's all. Come down.

Mr. Taylor:

May this witness be excused?

Mr. Simpson:

Yes, sir.

The Court:

This witness may be excused unless there is objection.

(Witness excused.)

C. F. WOELFLIN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. C. F. Woelflin.

Q. Where do you live?

A. 314 Edgewood Boulevard, Homewood.

Q. What do you do?

A. Master Mechanic for the L&N Railroad.

Q. That is your position now?

A. Yes, sir.

Q. Now have you in answer to a subpoena brought the call book, that big book there (indicating)?

A Yes, sir.

Q. For October, 1955?

A. Yes, sir.

Q. Now turning to October 23—first, what is the call book? Just tell us what that is.

A. The call book is when the caller, engine caller at the roundhouse gets a call for a train, he is the caller at the Yard Office the engineer and fireman's name that are to go on that train, and the caller at the Yard Office calls them.

Q. Mr. Jordan, he is an Engine Dispatcher, isn't he, out there, L. P. Jordan?

A. He is cut off at the present time.

Q. In times past he has done that work?

A. He is an extra dispatcher.

Q. What is the last entry on the page for Sunday, October 23, 1955?

A. On Train No. 4, call was put out at 6:10 p. m. for 8:55 p. m.

Q. Are there any other calls on that book for that day?

A. No, sir.

Q. In other words, Train No. 4, is 8:55 the time the train was supposed to move?

A. Time of the train departure.

Q. The departure time of the train?

A. Yes.

Q. The last call for that train was 6:00 p. m.?

A. No, 6:10 p. m. is when they called the Engine Dispatcher out there and gave him the call.

Q. Gave him the call on that?

A. Yes, sir.

Mr. Pettus:

We offer that page of this book in evidence.

Mr. Gibson:

No objection.

Mr. Pettus:

Identified as Defendants' Exhibit No. 7.

(Defendants' Exhibit No. 7 was marked for identification.)

Q. As the Master Mechanic what general employees are under your supervision or jurisdiction?

A. The non-operating employees, and the engineer and firemen, so far as their promotion and anything pertaining to their work around the roundhouse. They come under the Yardmaster, otherwise.

Q. You have jurisdiction then of those employees?

A. Yes, sir.

Q. Are those hourly rate employees, that is their basis of pay, when they work an hour they get paid for that hour they work?

A. Yes, sir.

Q. What is your usual system of paying a man, suppose he gets to work, he comes to work today, how does he turn in his time?

A. He has regular assigned time cards with a number. He checks the time card in and out each day, and then that is sent to Louisville for recording.

Q. He turns that card in at the conclusion of his shift?

A. Yes, sir.

Q. Is that time punched?

A. Yes, sir.

Q. By a time clock?

A. The time he started, at 7:00 o'clock in the morning, or whatever time his shift starts, and then it is punched out when his shift is completed.

Q. And he has got to be on the job and making the time before he is entitled to turn in his time card, is that correct?

A. Yes, sir.

Q. In October, 1955, how many shop men were there at the Yard?

A. I couldn't say, I was not in Birmingham at that time.

Q. How many are there now?

A. I would say around 500.

Q. About 500 are there now?

A. Yes, sir.

Q. As a matter of fact, there were about 300 more at that time?

A. They have cut down operations there some since October.

Q. They have been cut down?

A. Operations have been cut down, I couldn't say how many.

Q. There are 500 there now?

A. Yes, sir.

Q. And there were more last October than there are now?

A. Yes, sir.

Mr. Pettus:

All right.

Mr. Simpson:

That's all. We don't care to ask him anything.

Mr. Pettus:

Just one thing.

Q. Did you succeed Mr. Quiggins?

A. Yes, sir.

Q. Was he the Master Mechanic that you succeeded?

A. Yes, sir.

Mr. Pettus:

Thank you. Come down.

(Witness excused.)

Mr. Pettus:

Mr. C. S. Black.

C. S. BLACK, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name, sir?

A. C. S. Black.

Q. What do you do?

A. Trainmaster at the L&N, at Boyles.

Q. Do you handle certain of the time records of some L&N employees?

A. Yes, sir.

Q. Are they under your supervision?

A. Yes, sir.

Q. What employees are under your supervision?

A. Yard clerks, Yardmasters, switchmen, firemen, and engineers.

Q. In answer to a subpoena have you got the time cards for October 23, 24, and 25, and 26, 1955?

A. Yes, sir.

Q. Let's see those, please, sir.

A. This is the Yard clerks, Yardmasters. That is from here to there (indicating), running through the 31st. Those dates are right there.

Q. Now taking this card just as an example here of P. B. Hilton on the 16th, does that mean October 16?

A. Yes, sir.

Q. Straight, an 8 under it, does that mean he worked 8 hours on that time?

A. That's right.

Q. That entry is made on other days there. Now October 24 there are three little X-marks. What does that mean?

A. The days that he didn't work.

Q. The days that he didn't work, and it shows in his case that he didn't work October 24, 25, and 26?

A. That's right.

Q. This record here applies to the clerks and Yardmasters?

A. Yes, sir.

Q. All right now, let's take one. Do they call them non-operating employees?

A. Yes, sir.

Q. Let's take an operating employee, one of these time cards here. What do you call these?

A. This is the engineer and firemen's duplicate time card.

Q. Duplicate time card?

A. We keep the carbon copy and send the original—

Q. Let's take just one as an example here. And that is turned in for what date?

A. That is for October 24.

Q. October 24, and that is turned in, the two gentlemen whose names appear there, H. T. Simrell and R. E. Thomas?

A. That's right.

Q. Will you describe the procedure by which they make up that card and turn it in?

A. At the completion of their shift they are supposed to make out a time card for their day's work. This happened on October 24, on which nobody worked. What he is asking for is a claim for that date.

Q. That is the way he makes his claim?

A. Yes, sir.

Q. If he had worked that day he would have been paid on the basis of this same kind of card, is that right?

A. That's right.

Q. Have you got the cards for October 23, 24, 25 for which claims have been made?

A. No, sir.

Q. You don't—

A. I've got the time card for the 23rd up to the time of the shutdown, in other words, I got it up to the second shift, not the third shift.

Q. You don't have it for the third shift?

A. I don't have those.

Q. And the cards from the third shift on the 23rd that you don't have, we asked for those in that subpoena, but you don't have those for the 23rd during the work stoppage, is that correct?

A. No, sir, I have them for the 26th and 27th.

Q. Then they resumed again, when they started work, do you have those cards?

A. Yes, sir.

Mr. Pettus:

That's all.

Mr. Simpson:

That's all.

(Witne[illegible]xcused.)

The Court:

Is there anything further?

Mr. Pettus:

On behalf of the Defendants that I represent, we rest.

Mr. Taylor:
I also rest for the Defendants I represent, Your Honor.

The Court:
Very well.

Mr. Gibson:
May Mr. Robey be excused? You had him under subpoena.

Mr. Pettus:
Yes, he can be excused.

Mr. Simpson:
We are not going to offer any rebuttal, Your Honor.

The Court:
All right.

Mr. Pettus:
I wanted to renew our motion that we filed.

The Court:
The Defendants and each of them filed a motion for a directed verdict, and the Court reserves ruling thereon. The Plaintiff also filed a motion for a directed verdict, and the same ruling is made with respect to the Plaintiff.

All right gentlemen, all the witnesses can be excused from the Rule.

The Court has indicated to the parties it will charge the jury with respect to Section 106, Title 29, United States Code annotated, and that in order to hold the Defendants or any one of them, either as conspira-

tors or individually, there must be clear proof of actual participation in, or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof as provided in said Section 106.

Mr. Simpson:

The Plaintiff excepts to this ruling as to each of the Defendants, separately and severally.

And the Plaintiff now announces that in view of the Court's ruling it will at this time dismiss, in view of and by reason of the Court's ruling, it will now dismiss as to Defendants Southerland and Sutterlin.

The Court:

All right, Southerland and Sutterlin are dismissed as parties Defendant to the cause.

All right, you may proceed, Mr. Gibson.

(Thereupon, respective counsel argued to the jury, and at the conclusion of the argument the Court charged the jury as follows):

The Court:

Gentlemen, if you will give me your attention, I will undertake to instruct you as to the law applicable to the evidence and the issues in this case.

Now, in the trial of a lawsuit, of course, lawyers have certain functions to present their case, and the Court also has its function. And you gentlemen as jurors have your function.

The Court declares the rules of law applicable to the issues formed in the light of the testimony offered. The jury weighs the testimony and determines the facts proved and molded by the law as declared by the Court, and renders its verdict.

More specifically, the Supreme Court of the United States has said with respect to the jury's function, the very essence of the jury's function is to select from among conflicting inferences and conclusions that which it considers most reasonable. Fact finding does not require mathematical certainty. Jurors are supposed to reach their conclusions on the basis of common sense, common understanding and fair beliefs, grounded on evidence consisting of direct statements of witnesses, or proof of circumstances from which inferences can be fairly drawn.

You are jurors fairly chosen from different walks of life, and as such bring into the jury box a variety of different experiences, intuitions and habits.

Now gentlemen, keeping those functions in mind, the Court will more specifically instruct you with respect to the law in this case.

A person begins a lawsuit by filing a complaint. The complaint is the vehicle by which the action is made effective, or brought into Court, and that is what has been done in this case.

Now, the complaint itself is not evidence of the matters and things charged in the complaint. It is, as I have stated to you, merely the vehicle.

Now, the complaint in this case consists of one count. It is known as "Amended Count Three." And it reads as follows: It is a brief complaint.

"Plaintiff avers that on, to-wit, October 23, 1955, it was engaged in a lawful business, to-wit, that of a common carrier by rail in interstate commerce; and that on or about said date the Defendants, being employees of the Plaintiff, did conspire or combine to interfere with Plaintiff's said business, and pursuant to said conspiracy or combination did intentionally and without just cause interfere with and

prevent Plaintiff from carrying on said business, in that they caused other employees of the Plaintiff by means of intimidation or threats of force or violence not to perform their duties for the Plaintiff; and did thereby cause a substantially total cessation of Plaintiff's operation in Jefferson, Morgan and Montgomery Counties and other places on its lines in the State of Alabama. And as a proximate consequence thereof Plaintiff was injured and damaged in the amount of $250,000, which Plaintiff claims of the Defendants as damages in this cause."

Now gentlemen, the burden of proof is, of course, upon the Plaintiff to reasonably satisfy you of the material averments of this count of the complaint before it would be entitled to recover.

That is true because the Defendants and each of them filed in this cause an answer, and that answer is what is known as the general issue or general denial. And that general denial or general issue places the burden of proof upon the Plaintiff in this case.

Now gentlemen, the law, that is the basic or substantive law, that controls this case is the law of Alabama, except as modified by a provision of the Federal Statutes, found in what is known as the Norris-LaGuardia Act.

This railroad, as it has averred here, is engaged in nterstate commerce, and Congress, of course, has a right to control, or has a right to legislate with respect to instrumentalities of interstate commerce.

Now, the Section that I have reference to is Section 106 of Title 29 of the United States Code. And it reads as follows:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any Court of the United

States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof."

Now gentlemen, you keep that Statute in mind when I charge you with respect to a conspiracy.

Now gentlemen, in this complaint in this case it is averred that the Defendants did conspire or combine, that pursuant to said conspiracy or combination they did conspire and combine, and pursuant to said conspiracy or combination they did intentionally and without just cause, interfere with and prevent Plaintiff from carrying on said business, in that they caused other employees of Plaintiff by means of intimidation or threats of force or violence.

Now there are three things charged there that the Plaintiff says that they did some one or all of these. Now they would not have to prove all three of them because they are averred in the alternative. They said these Defendants were guilty of intimidation or threats of force or violence.

Now, of course, violence has a well-known significance and meaning to you. And so does threats of force. But the word ',intimidation" is used there, and it has a special legal significance which I will give to you:

"To consttute intimidation of employees by persons participating in a strike, it is not necessary that there should be any direct threat or actual violence, but it is sufficient if the attitude assumed is intimidaton."

Now, here is another definition:

"To intimidate is to inspire with fear, to overawe or make afraid. Fear may be inspired without

physical violence or spoken threats, and moral intimidation may be accomplished by a menacing attitude, and a display of force which may coerce the will as effectively as actual physical violence.

"Conduct of a strike may be such as to constitute intimidation, though there is no use of force or physical violence. Intimidation of workers by strikers may consist in numbers alone, without any actual violence."

I am not saying to you that is the case here, but I am saying to you that you may consider that matter in considering all of the evidence in this case, and in considering whether or not there was intimidation present as charged in this complaint.

Now gentlemen, it is averred also that the Defendants did conspire or combine to do these things which are charged in the complaint.

Now conspiracy has a particular significance in the law. And I will give you some of the rules with respect to it.

A civil conspiracy is defined generally as a combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means.

More specifically it is defined as a combination of two or more persons to do, one, something that is unlawful, oppressive or immoral; or, two, something that is not unlawful, oppressive or immoral, by unlawful means; or, three, something that is unlawful, oppressive or immoral by unlawful, oppressive or immoral means.

Now to constitute a conspiracy there must be a combination of two or more persons. One person cannot conspire with himself.

It is not necessary that all of the conspirators be parties Defendant to the suit. There must be a preconceived plan or unity of design and purpose. The mere fact that each of the several Defendants acted illegally with the same end in view does not constitute a conspiracy, unless such act was done pursuant to a mutual agreement.

And the mere knowledge, acquiescence or approval of the act without co-operation or agreement to cooperate is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view of the furtherance of the common design and purpose.

No formal agreement between the parties to do the act charged is necessary. It is sufficient that the minds of the parties meet understandingly, so as to bring about an agreement to do the acts, although such an agreement is not manifested by any formal words or by any written instrument.

It is not essential that each conspirator have knowledge of the details of the conspiracy, or the exact part to be performed by the other conspirators in the execution thereof. Nor is it necessary that the details be completely worked out in advance to bring a given act within the scope of the general plan.

The purpose need not be necessarily to commit a criminal act, but the purpose is unlawful when it is proposed wrongfully to violate some individual's right.

The results need not be specifically intended, or the means specifically agreed on.

To create liability there must have been an act done by one or more of the conspirators pursuant to the agreement, and in furtherance of the object. This is known as an overt act. An overt act is one that is

manifest, open, issuing in action, as distinguished from that which rests merely in intention or desgn.

Civil liability is conditioned upon actual damages actual damage resulting from something done by one or more of the conspirators in furtherance of the object of the conspiracy.

If a conspiracy is conceived and executed and a private injury results, the one so injured has a right of action against the conspirator.

The test for determining the lawfulness of the combination is the motive for combining, or the nature of the object to be attained as a consequence of the action.

Intention to do that which is calculated in the ordinary course of events to damage another in his property or trade will, when done without just cause or excuse, impose liability upon the wrongdoer.

Just cause or excuse exists only where the injury inflicted is the means to some end legitimately desired and incidental thereto, and is not the result of a specific intent and immediate purpose of the injury to others that benefit may ultimately come to the members of the combination.

It is entirely wanting,—that is just cause and excuse—when the immediate purpose of the combination is to inflict injury on others, and the benefit, if any, to result to the combination is indirect and remote.

An agreement entered into for the primary purpose of injuring another is not rendered legal by the fact that it may not incidentially benefit the parties.

As I have stated to you, no civil action lies for an unexecuted conspiracy. Yet whenever, in pursuance of an unlawful combination to injure another in his business, means have been employed which tend to

effectuate and to a greater or less extent did accomplish the object of the conspiracy, the conspirators are liable for the resulting injury and damage.

Whether or not a combination formed for injuring another in his business be lawful, so far as the purpose is concerned, if unlawful means are used effectuating that purpose, resulting in damages, those forming the combination will be liable for such damages.

Intention to do that which is calculated in the ordinary course of events to damage another, and which does in fact damage such other party in his property or trade, imposes a liability on the parties so acting, if they have acted without just cause or excuse.

If the object of a strike is lawful, and no unlawful means are employed in rendering it effective, the members of the striking combination will not be liable and subject to an award of damages.

As I have stated to you, before a party can be held liable as a conspirator, it must be proven to your reasonable satisfaction that he entered into an agreement with the other conspirators to accomplish the object of a conspiracy.

As I have also stated to you, such an agreement need not be formal or in writing.

And subject to the limitations of the Statute referred to as to actual participation in, or actual authorization of, or ratification of the act after knowledge, each conspirator is jointly and severally liable for all damages resulting from the conspiracy.

Any act done by any conspirator in furtherance of the common design, and in accordance with the general plan becomes the act of all. And each conspirator is responsible for such act.

And further, subject to the Statute referred to, every conspirator is liable for all overt acts illegally committed in pursuance of the conspiracy, and for the loss proximately resulting therefrom, whether he joined willingly or unwillingly in the furtherance of the common end.

If he actually authorized or actually ratified the overt act or acts after actual knowledge thereof, he would be liable, whether he was an actual participant or not, or whether he was actually present or not when the acts in pursuance of the conspiracy were committed.

A conspirator is none the less liable because he expected to derive no benefit from the wrong, or in fact received no benefit from it. However, he would not be liable for independent acts growing out of malice of particular individuals.

To render a person civilly liable for injuries resulting from the conspiracy of which he was a member it is not necessary that he should have joined the conspiracy at the time of its inception.

Subject to the Statute as to participation or authorization or ratification after knowledge, every one who enters into a common design is in law a party to every act previously or subsequently done by any of the others in pursuance of such design.

Now, a conspiracy may be established by circumstantial evidence. Usually it is susceptible of no other proof than that of circumstantial evidence.

A conspiracy, in and of itself, is not the ground or the essence of the charge, but it may be proved as aggravating the wrong of which complaint is made, enabling the Plaintiff to recover one action against all joint wrongdoers.

The gist or the essence of the action for a conspiracy is the damages, and not the conspiracy; and the damage must appear to have been the natural and proximate consequence of the Defendants' acts.

Where the Plaintiff failed in its proof of a conspiracy, such Plaintiff may yet recover damages against one or more of the Defendants shown to have been guilty of the wrong without such an agreement.

Now gentlemen, we are not here concerned with whether the layoff of the outside hostlers helpers was justified.

Plaintiff's right of recovery here, if it has such a right under the evidence, does not depend upon proof that the layoff was justified. We are not here concerned about the policy involved, or the wisdom of Plaintiff's course in abolishing the hostler helpers jobs, or whether those jobs should have been continued.

The evidence reveals that there is a regular grievance machinery set up for the adjustment of such complaints. And whether the outside hostler helpers will or will not be reinstated is of no concern to you.

Now if these Defendants here breached their contracts in calling a strike, if they did call the strike, or participating in the strike, that would not subject them to liability, because this is not a suit for the breach of contract.

The question is not whether the Defendants breached the Union contract with the Plaintiff by calling or participating in an unauthorized strike, if they so breached that contract. and did so participate in an unauthorized strike. But the question here is whether the Defendants, or some one or more of them, individually or in conspiracy, one with another, or with

another or others, though not a party to this suit, intentionally and without just cause, by means of intimidation or threats of force, or violence, interfered with and prevented the Plaintiff from carrying on its business, proximately resulting in damages to the Plaintiff.

If there was no such intimidation or threats of force or violence proximately resulting in damages to the Plaintiff, Plaintiff would not be entitled to recover.

If there was, under the circumstances recited, the Plaintiff would be entitled to recover against the Defendant or Defendants who used intimidation, threats of force or violence which proximately resulted in damages to the Plaintiff

Now gentlemen, the right to have and conduct a lawful business is a valuable property right, and a wrongful injury thereto, proximately resulting in damages, will subject the wrongdoer to liability for such damages.

Now, you have heard the evidence in this case. You have heard I believe 61 witnesses.

Now gentlemen, it is your duty to look to all of the material evidence in the case in order to determine what is the real and true state of facts. And you will weigh all the evidence in the case so as to reconcile all of the evidence where it may seem to conflict, or apparently conflict, if you can do so. You will not capriciously reject any evidence, but will reconcile all of it if you can do so.

If you cannot reconcile the testimony of the witnesses so as to make all of them speak the truth, then it is for you to say whom you are going to believe and whom you won't believe in the lawsuit.

And in determining the weight you will give to any witness' testimony, you may take into consideration any interest a witness may have in the result of the lawsuit; the demeanor of the witness on the witness stand, or any interest or bias the witness may show by his or her own testimony.

The jury are instructed that you may look, and it is your duty to look to the demeanor of the witnesses who testify, their opportunity to hear and see and to know as applied to the facts in the case, and to weigh the evidence and to give it all such weight and credence as you see fit and proper.

The oath of a juror has been taken by them to decide this case according to the evidence. They have no right to go outside of the evidence or to indulge in any views of their own upon the subject which find no warrant in the sworn evidence adduced before you.

While the jury cannot guess or surmise, the jury are entitled to draw all reasonable inferences from the facts in evidence.

Now gentlemen, if after considering all of the evidence in this case you are not reasonably satisfied from the evidence that the Plaintiff is entitled to recover against one or more of these Defendants, it would be your duty to return a verdict for all of the Defendants in this case.

If on the other hand you are reasonably satisfied that the Plaintiff is entitled to recover of one or more of these Defendants, then you would come to the question of damages in this case.

Now the Plaintiff has placed upon the board in this case their claim of damages. You have heard the evidence in that regard. The damages in this case are not punitive, they are compensatory. They claim

they lost money on account of cars that they had to reroute; that they had to pay rent on cars that they could not move off of their line; that they sustained loss because of cars that they were under legal obligation to accept which they could not accept; and that they lost profits.

Now you have heard the evidence in the case. You weigh the evidence. If you are reasonably satisfied from the evidence that the Plaintiff is entitled to recover, it would be entitled to recover the losses which they have reasonably sustained in this case.

Gentlemen, the weight of the evidence is for the jury, as is also the credibility of the witnesses in this case. As I have stated to you, you have heard a lot of witnesses who have given oral testimony. There is a lot of written evidence in the case, and you will consider that too.

Now in the course of this trial it has been necessary for the Court to make numerous rulings upon evidence and upon motions. And in making those rulings, the Court did not intend to indicate how he felt about it, how he felt about this case or how it should be decided. That is no concern of the Court. The only concern of the Court here is that justice be done between the litigants in this case. Every man and every corporation stands equal before the law, and is entitled to a fair trial.

Now it has been necessary that the Court exclude certain evidence from your consideration. When evidence is excluded from your consideration, gentlemen, it is not to be considered by you, and you will forget such evidence, exclude it from your minds.

Gentlemen, the verdict of the jury cannot be based upon sympathy or prejudice.

I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that any witness had willfully sworn corruptly and falsely to any material fact, you in your sound judgment may disregard such witness' testimony in its entirety.

Gentlemen, it takes all twelve of your number to arrive at a verdict. In other words, a verdict must be unanimous.

The Clerk has prepared for your convenience forms of verdict. After these forms of verdict there is a sheet giving the style of the case and the names of all the Defendants that are now before you.

Now if you find for the Plaintiff in this case the form of your verdict will be "We, the jury, find for the Plaintiff, Louisville & Nashville Railroad Company, and against the Defendants", and then there is a blank space for you to write in the name of the Defendants, "and assess its damages at blank dollars", one of your number signing as foreman.

Now, if there is anyone of the Defendants that you find in favor of, or if you find in favor of all of the Defendants, the form of your verdict in that case will be "We, the jury, find for the Defendant."

Now, there is a separate form of verdict for the Defendants. "We, the jury, find for the Defendant, J. M. Brown, Jr.", and H. M. Baum, and all of the Defendants that are left in the case,—a separate verdict as to each one of those.

All I have stated to you, if you find against any Defendant, you will write the name of the Defendant in this form of verdict in favor of the Plaintiff.

If you find in favor of anyone of the Defendants, you will return one of the separate verdicts in favor of the Defendant.

I think you will find it is not complicated after you have had a chance to consider these forms of verdict.

Now gentlemen, the Court has been requested to give at the instance of the Plaintiff the following written instructions, which are correct statements of the law, and which are to be taken by you in connection with the Court's oral charge as being consistent therewith, and not in conflict therewith.

(The Court read to the jury the charges given at the request of the Plaintiff.)

Now the Court has been requested to give at the instance of the Defendants the following charges which are correct statements of the law, and which are likewise to be taken in connection with the Court's oral charge as consistent therewith. These are in the interest of the Defendants.

(The charges given at the request of the Defendants were read.)

The Court:

Gentlemen, do we have the usual agreement as to the form of verdict?

Mr. Simpson:

Yes, sir.

Mr. Pettus:

Yes, sir.

The Court:

Are there any objections or exceptions to the Court's oral charge?

Mr. Pettus:

I have one, Your Honor. I want to except to that portion of the oral charge with regard to civil conspiracy and all that followed that, on the ground that that is inconsistent with Section 106 of the Norris-LaGuardia Act.

The Court:

I think I made the point that that entire charge or statement was modified by the—

Mr. Pettus:

I think Your Honor stated it was subject to that Act.

The Court:

I intended to do that. Is there anything further?

Mr. Simpson:

Yes, sir. For the Plaintiff we would like to except to that part of the charge in which the Court said that this case is governed by the law of Alabama, except as it may have been changed by Section 6 of the Norris-LaGuardia Act.

The Court:

That is the statute you have involved.

Mr. Simpson:

Yes, sir. Then we except to the Court's reading your statement to the jury—

The Court:

You get right down to the applicability of the statute.

Mr. Simpson:
That's what I want to raise, yes, sir.

The Court:
Is there anything else?

Mr. Simpson:
Secondly, to the subsequent references throughout your charge, where you said as modified by the law in respect to conspiracy.

Now then we would like to except to the giving of the charges,—we think the Court is in error in that respect,—where the Court charged this is not a question of whether Defendants breached their contract with the Plaintiff. Do you remember that part of the charge?

The Court:
Yes. The Alabama Supreme Court has held a mere breach of contract is not ground for conspiracy in the case. And you are not suing individually on breach of contract.

Mr. Simpson:
It is our opinion that that is a part of the whole conspiracy, and consequently the Court in excluding that from their consideration has limited it so materially—

The Court:
You notice I ruled that the fact that the justification of the dispute was not involved.

Mr. Simpson:
Now then we would like to except also to the giving of charge, I believe No. 10, for the Defendants. Have you got those charges?

The Court:
Charge 10 for the Defendants?

Mr. Simpson:
For the Defendants, yes, sir.

The Court:
Apparently I didn't give any charge 10.

Mr. Simpson:
I believe you did.

Mr. Gibson:
Your Honor made us a list of the charges given for the Defendants here on our copies.

The Court:
Yes.

Mr. Simpson:
This charge here.

The Court:
Which one is it? Let's see which one it is. Do yo have the charge?

Mr. Pettus:
That wasn't given.

The Court:
No, I didn't give charge 10.

Mr. Simpson:
You didn't give that?

The Court:
No.

Mr. Simpson:
Did you give charge 20?

The Court:
Yes, sir, I gave charge 20.

Mr. Simpaon:
I want to except to that on the ground it is argumentative, confusing and misleading, contrary to the constitution, contrary to the Railway Labor Act, contrary to the Norris-LaGuardia Act, contrary to the evidence, assumes the existence of certain facts not in evidence; and invades the province of the jury.
Now then did you give No. 27?

The Court:
I think it is an argumentative charge.

Mr. Simpson:
How about 27, did you give that?

The Court:
No, I didn't give 27.

Mr. Simpson:
Did you give 28?

The Court:
No, I didn't give 28. Let me see just a minute. I gave 26.

Mr. Simpson:
26 is the one of the same kind,—no, it isn't, either.

The Court:
It is one of that series.

Mr. Simpson:
Yes. We want to object to the giving of charge No. 26, and the others like it, separately and severally,—you remember there were fourteen of them—on the ground it is misleading and confusing.

The Court:
Are you referring to 26 now?

Mr. Simpson:
Yes, sir.

Mr. Gibson:
And all of those which are similar to it or identical with it, except as to the names of the parties.

Mr. Simpson:
26 and that series.

The Court:
That series consists of some fourteen charges.

Mr. Simpson:
That series consists of some fourteen charges, yes, sir, in which separately the names of each Defendant is used,—on the ground it is misleading and confusing, omits the hypothesis that all the alleged financial damages was not proximately caused by the acts charged; it is argumentative.

It is not hypothesized upon the reasonable satisfaction of the jury from the evidence that all damages were proximately caused by a strike of Plaintiff's employees carried on by force; contrary to the evidence; contrary to the Railway Labor Act; assumes the existence of facts in issue, and is contrary to the law of conspiracy.

It is tantamount to a charge that there is no conspiracy in this case, we think. We except to it on that ground.

This charge D, you gave that, didn't you?

The Court:
D?

Mr. Simpson:
Yes, sir.

The Court:
Yes, I gave that.

Mr. Simpson:
We object to that on the ground it is not hypothesized upon the lawfulness of the strike itself, it is misleading, it is argumentative, and is in effect a charge that an act done in support of an illegal act if peaceful is lawful and not illegal; assumes an implication that the strike was legal, and is a charge on the effect of the evidence. I realize that this is a Federal Court, of course.

Let me see those. I think there are two others there that we have missed.

Mr. Taylor:

Can I state one while he is checking there? I want to except also on behalf of my clients to the definition of conspiracy as being inconsistent with Title 29, 106 U. S. Code, that Your Honor read. That's all I have.

Mr. Simpson:

We except to the giving of charge C, because it is abstract, argumentative, assumes facts which are not in evidence, and is contrary to the Railway Labor Act, and contrary to the Norris-LaGuardia Act, and the charge is on the effect of the evidence.

We except to the giving of charge No. 24, on all of the grounds assigned to the objection to charge 26. That is the same in effect.

We except to 25. We except to the giving of charge 25, on the ground assigned as objection to the giving of charge No. 26, and that series of charges.

We except to charge 23. We except to that on all the grounds assigned as objection to the giving of charge No. 26. And we object as to each of the fourteen separate Defendants, separately and severally.

The Court:

Gentlemen, you will now retire and consider your verdict in this case.

(The jury thereupon retired and at 5:00 o'clock p. m. were excused until 9:00 o'clock on Tuesday, October 2, 1956.)

Tuesday, October 2, 1956,
9:00 A. M.

(The jury deliberated until 3:55 p. m., at which time the Court instructed the jury further as follows):

The Court:

Gentlemen, you have been out a considerable time now. You have not asked for further instructions, but in view of the lapse of time the Court is going to give you this further instruction. I hope you will listen carefully.

One mode provided by our constitution and laws for deciding questions of fact is by the verdict of a jury. In a large number of cases, and perhaps strictly speaking in all cases, absolute certainty cannot be attained or expected.

Now this is an important case. The trial has been long and expensive. Your failure to agree upon a verdict will necessitate another trial equally as expensive.

The Court is of the opinion that the case cannot be again tried better or more extensively than it has een presented, on either side. It is therefore very desirable that you should agree upon a verdict, if this is possible.

The Court does not desire that any juror shall surrender his conscientious convictions. On the other hand, each juror should perform his duty conscientiously and honestly, according to the law and the evidence, and although the verdict to which a juror agrees must, of course, be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellws, yet in order

to bring twelve minds to a unanimous result you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other.

You should consider that the case must at some time be decided; that you are selected in the same manner and from the same source from which any future jury must be. And there is no reason to suppose that the case will ever be submitted to twelve men more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on one side or the other.

In conferring together you ought to pay proper respect to each other's opinions, with a disposition to be convinced by each other's arguments.

And on the one hand, if much the larger number of your panel are for a particular party or side, a dissenting juror should consider whether a doubt in his own mind is a reasonable one which makes no impression upon the minds of so many men, equally honest, equally intelligent as himself, who have heard the same evidence, with the same information, with an equal desire to arrive at the truth, and under the sanction of the same oath.

But on the other hand if a majority are for the other party or side, the minority ought to seriously ask themselves whether they may not reasonably and ought not to doubt the correctness of the judgment which is not concurred in by most of those with whom they are associated and destroys the weight sufficiently of that evidence which fails to carry conviction to the minds of their fellows.

I just wanted to give you that further charge. I have given you the charge on the law in this case as applicable to the evidence in the case, and I want

you gentlemen to again retire and see if you cannot arrive at a verdict in this case.

Is there any objection to the charge?

Mr. Simpson:
No, sir.

Mr. Pettus:
No, sir, Your Honor.

Mr. Taylor:
No, sir.

(Thereupon, at 4:00 p. m. the jury again retired to consider its verdict, and at 4:15 p. m. returned with a verdict in favor of each Defendant.)

DEFT. EX. 1.

Louisville and Nashville Railroad Co.
Office of Master Mechanic
Bulletin #135

Boyles, Ala., Oct. 19, 1955.

S&NA Division

All Outside Hostler Helpers:

The following Outside Hostler Helpers' positions will be abolished at end of shift Sunday, Oct. 23, 1955:

Ed. Dorrity—Seniority Date 8-27-22, Second Shift

W. L. Grissom—Seniority Date 9-30-25, First Shift

C. L. McCutchen—Seniority Date 7-31-41, Third Shift

J. B. QUIGGINS, M.M.

JBQ—ewb
Cy—Mr. Ed. Dorrity
Mr. W. L. Grissom
Mr. C. L. McCutchen
Mr. J. B. Otts, L. C
All Roundhouse Foremen

DEFT EX. 3.

Master Mechanic, Boyles, Ala., October 18, 1955.
Desk A • • •

Mr. B. M. Mitchell:—

We have been instructed to abolish all outside hostler helper jobs at Boyles roundhouse. It is understood, of course, that the herder will protect the locomotive from the switch at the roundhouse track when any outside moves are made.

In our recent conversation it was understood that as many outside moves as possible would be eliminated, and when it became necessary to swap locomotives account of inspection, or account defects, the engine crew would take the engine to the roundhouse to make the swap.

I find nothing in the agreement that could be construed as justifying a claim for such moves

Your co-operation in this matter will be very much appreciated.

J. B. QUIGGINS, M.M.

jbq/e.
cc. Mr. J. R. Parsons,
Mr. L. I. Mulvaney.

DEFT. EX. 6

Brotherhood of Locomotive Firemen and Enginemen
General Grievance Committee
Louisville and Nashville R R.
Louisville 2, Kentucky

Jake Paschall, Gen'l Chairman
404-5 Hoffman Building

M. B. Cunningham, Senior Vice-Chairman
D. W. Copeland, Sr., Junior Vice-Chairman
H. T. Turner, Secretary-Treasurer

Representing Lodges Nos. 55, 218, 390, 503, 578, 612, 689, 816, 833, 861, 862, 864, 865, 866, 867, 878, 937, 955, 960.

Please Refer to File: 937-Open.

October 20, 1955

Mr. W. S. Scholl, Director of Personnel,
Louisville & Nashville Railroad Company,
908 W. Broadway,
Louisville 1, Kentucky

Dear Sir:

I am advised that the Master Mechanic at Birmingham, Alabama has posted bulletin notice abolishing three (3) hostler-helper jobs effective October 23, 1955. It seems there is no change in conditions nor reason to abolish these outside hostler-helper positions. As I understand it, their duties are to assist

the outside hostler in delivering engines, servicing engines, throwing switches etc.

We wish to protest the discontinuance of these outside hostler-helper jobs and to advise that in the event they are abolished we expect to make claim for each day these men are out of service.

It appears that it would be well to discuss the matter before the jobs are abolished, and will appreciate your advice as to when that might be done.

Please advise.

Yours very truly,
JAKE PASCHALL,
(Jake Paschall),
General Chairman.

JP:IED
Bld. Cy.: J. B. Otts, Jr. L.C.
G. E. Lloyd, R. S.

MOTION FOR DIRECTED VERDICT.

Fled Sept. 26, 1956.

(Title Omitted.)

Comes each defendant in the above styled cause, separately and severally, by their attorneys, and said defendants separately and severally, hereby move the Court to direct a verdict in favor of each defendant, separately and severally, and against the plaintiff, and as grounds of said motion, assign the following, separately and severally, to-wit:

1. Plaintiff has failed to prove the material averments of the complaint as amended.

2. Plaintiff has failed to prove by a preponderance of the evidence that said defendant did conspire or combine with other defendants or with any other person to inferfere with plaintiff's said business.

3. There is no evidence that any conspiracy or combination of plaintiff's employees did intentionally and without just cause interfere with and prevent plaintiff from carrying on said business.

4. There is no evidence that said defendant or other employees of plaintiff pursuant to a conspiracy or combination caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff.

5. There is no evidence that said defendant did conspire or combine with any other defendant or any other person as alleged in the complaint.

5a. Plaintiff has failed to prove any recoverable damage.

6. There is no evidence that said defendant caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff.

7. There is no evidence in this case that said defendant employed any violence as alleged in the complaint, and there is no evidence that said defendant was a member of any conspiracy or combination using violence as alleged in said complaint.

8. The evidence in this case shows without dispute that the cause of action sued on is an alleged labor dispute by and between plaintiff and its employees, and that said labor dispute is within the primary exclusive jurisdiction of the National Railroad Adjustment Board pursuant to the Railway Labor Act.

9. The undisputed evidence in this case shows that any cessation of plaintiff's business as alleged in the complaint was caused by a spontaneous walk out of plaintiff's employe s in exercise of their constitutional right under the State and Federal law to cease work.

10. The proof shows without dispute that the plaintiff has failed to exhaust the administrative remedies before the National Railway Adjustment Board.

11. The proof shows without dispute that there is no existing contract between plaintiff and any of the defendant employees of plaintiff prohibiting any strike or walk out or prohibiting any peaceful persuasion of any other employees of plaintiff to walk out.

12. The proof shows without dispute that the cause of action sued on is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board.

13. The undisputed evidence shows that the defendant employees of plaintiff have the right under the State and Federal law to cause a strike or walk out and that there is no existing contract or any provision of any existing contract limiting the right of the defendants or any of the defendants to engage in

or persuade others to engage in a peaceful strike or walk out.

14. Th proof fails to show that the defendants or any two or more of the defendants entered into any illegal conspiracy or combination against the plaintiff.

15. The undisputed evidence shows that the defendants collectively and severally and separately have not committed any actionable wrong against the plaintiff.

16. The proof shows without dispute that each individual defendant is free from the commission of any actionable wrong against the plaintiff.

17. The proof shows without dispute that the defendants collectively have not committed any actionable wrong against the plaintiff.

18. The evidence shows without dispute that the plaintiff caused a labor dispute with its employees by failing to give proper notice of the abolition of the jobs of hostler helpers as provided in the Railway Labor Act.

19. The evidence shows without dispute that the plaintiff has violated the terms of the collective bargaining agreement covering the hostler helpers by failing to give notice and in other respects as provided in said agreement preliminarly to the abolition of the craft of hostler helpers.

20. The evidence show without dispute that the plaintiff has hazarded the lives of some of its em-

ployees by abolishing the skill jobs of hostler helpers and substituting unskilled negro labor in the place of the skilled hostler helper.

21. The evidence shows without dispute that the controversy between the plaintiff and its employees, who are defendants, in this cause, is a labor dispute within the primary exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

22. Under the undisputed evidence said defendant is shown to be not bound by contract for a definite period and not by agreement freely made having given up any right to strike or participate in a work stoppage or to cause other employees to participate in a work stoppage had the right to strike or participate in a work stoppage or to cause other employees to participate in a work stoppage ad the undisputed evidence shows said defendant committed no unlawful act in so doing.

23. The undisputed evidence shows that said defendants being employees of the plaintiff had the right to strike or participate in a strike or to cause other employees of plaintiff to participate in any strike involving a labor dispute between plaintiff and any of its employees.

24. The undisputed evidence supports one or more of said defendants defenses to the complaint as last amended.

25. The undisputed evidence shows that said defendant committed no unlawful act against plaintiff or plaintiff's employees as alleged in the complaint.

26. The evidence shows that said defendant was a member of an association or organization participating or interested in a labor dispute and it is provided in Title 29, U.S.C.A. Sec. 106 that under such circumstances said defendant shall not be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation or actual authorization of such acts or ratification of such acts after actual knowledge thereof.

27. There is no clear proof that said defendant participated in any unlawful acts.

28. There is no clear proof that said defendant actually authorized any unlawful acts.

29. There is no clear proof that said defendant ratified any unlawful acts after actual knowledge thereof.

30. There is no clear proof that any individual officer, member or agent of any association or organization, as provided in Title 29, USCA Sec. 106, committed any unlawful act.

31. Section 6 of the Norris-Laguardia, Title 29 USCA Sec. 106, reads as follows:

"No officer or member of any association or organization and no association or organization participating or interested in a labor dispute, shall be held responsble or liable in any Court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participa-

tion in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

and there is no legally admitted evidence in this case under the above quoted statute that said defendant is responsible or liable under the evidence for any claim made in the complaint.

32. The evidence affirmatively shows that said defendant had the right to strike by reason of an existence of a labor dispute between plaintiff and its employees.

33. The evidence affirmatively shows that said defendant exercised his constitutional right to strike by quitting the employment of plaintiff by reason of a labor dispute existing between plaintiff and its employees of whom said defendant was one.

34. The evidence affirmatively shows that said defendant did not interfere with plaintiff's business without just cause.

35. The evidence affirmatively shows that said defendant cannot be held liable or responsible in this case without imputing to said defendant the alleged unlawful acts of individual officers, members or agents of an association or organization contrary to Title 29, USCA Sec. 106.

36. There is no clear proof against said defendant of actual participation or actual authorization of the alleged unlawful acts of individual officers, members or agents of an association, nor of ratification by

said defendant of such alleged acts after actual knowledge thereof.

37. The evidence shows that said defendant was a member of an association or organization participating or interested in a labor dispute and it is provided in Title 29, USCA Sec. 106 that under such circumstances said defendant shall not be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation or actual authorization of such acts or ratification of such acts after actual knowledge thereof, and there is no legally admitted evidence in this case that said defendant actually participated in or actually authorized any alleged unlawful acts of any individual officer, member or agent of any association or organization participating or interested in the labor dispute existing between plaintiff and its employees and there is no evidence that said defendant ratified any such alleged acts after actual knowledge thereof.

38. Under the undisputed evidence in the case said defendant had just cause for all acts committed by him under the evidence, under the agreement existing between the plaintiff and the association to which said defendant belonged.

39. Under the undisputed evidence in this case, said defendant had just cause for all acts committed by him under the evidence, under the agreement between the plaintiff and the Craft covering the conditions under which said defendant worked for plaintiff as an employee.

40. Under the undisputed evidence in the case, said defendant had just cause for all acts committed by him under the evidence, under the Railway Labor Act.

41. The evidence shows without dispute that said defendant had the right to cease rendering labor or services to plaintiff under the following provision of the Railway Labor Act, Title 45, Section 152, USCA:

"* * * providing, That nothing in this chapter shall be construed to require an individual employee to render labor or services without his consent nor shall nothing in this chapter be construed to make the quitting of his labor by an individual employee an illegal act."

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
FRANK O. BURGE, JR.,
(Frank O. Burge, Jr.),
R. MACEY TAYLOR,
(R. Macey Taylor),
Attorneys for Defendants.

MOTION FOR DIRECTED VERDICT.

Filed Oct. 1, 1956.

(Title Omitted.)

Comes the plaintiff and moves the Court to direct a verdict in its favor and against the defendants and each of them, separately and severally, in this cause

and for grounds assigns, separately and severally, the following:

1. Plaintiff has proved by substatnial evidence which is not disputed every element of its complaint.

2. Plaintiff has proved by undisputed substantial evidence every material allegation in the complaint.

3. There has been established by undisputed substantial evidence every element of plaintiff's case as set forth in the specification of issues in the Court's pre-trial order.

4. For that the evidence is insufficient to warrant a finding that any of the special defenses, of the defendants, has been established.

5. All of the acts of the defendants herein were done in furtherance of an illegal purpose.

6. Under the undisputed evidence, the strike at plaintiff's place of business from October 23 to October 26, 1955, was over the abolition of the outside hostler helper jobs and was illegal.

GIBSON & GIBSON,
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
Attorneys for Plaintiff.

DEFENDANTS' CHARGES GIVEN.

(Title Omitted.)

C. Gentlemen of the jury, I charge you that laborers possess the right to strike where their complaints are in good faith referable to wages, hours or other conditions of immediate employment.

Given.

GROOMS,
J.

D. Gentlemen of the jury, I charge you that the employees of an employer who are engaged in a strike or work stoppage against the employer may lawfully support the strike or work stoppage by peaceful picketing.

Given.

GROOMS,
J.

20. Gentlemen of the jury, I charge you that if you are reasonably satisfied from all of the evidence in the case that on or about October 23, 1955, the work stoppage or strike commenced by plaintiff's employees against plaintiff on account of the abolition of hostler helper jobs by plaintiff, then I charge you that the defendants, or any of the defendants, were guaranteed the right under the Constitution of the United States peacefully to picket the plaintiff.

Given.

GROOMS,
J.

23. If you are reasonably satisfied from all of the evidence in the case that defendant, J. M. Brown, Jr. at the time alleged in plaintiff's amended complaint was a member of an association or organization participatng or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

24. Gentlemen of the jury, I charge you that you canot find for the plaintiff and against any individual defendant unless you are reasonably satisfied from all the evidence that such individual defendant actually participated in an unlawful act or actually authorized an unlawful act or ratified an unlawful act after actual knowledge thereof.

Given.

GROOMS,
J.

25. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against any individual defendant unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or volence not to perform their duties with plaintiff, or ratifed the act of another who caused other employees of plantiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

26. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. M. Brown, Jr., unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

46. If you are reasonably satisfied from all of the evidence in the case that defendant J. B. Otts, Jr. at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintff after actual knowledge thereof.

Given.

GROOMS,
J.

47. If you are reasonably satisfied from all of the evidence in the case that defendant, A. R. Thomas at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge

you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintff after actual knowledge thereof.

Given.

GROOMS,
J.

48. If you are reasonably satisfied from all of the evidence in the case that defendant, J. M. Weldon, at the time alleged in plaintiff's amended complaint, was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act

of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

49. If you are reasonably satisfied from all of the evidence in the case that defendant, C. L. McCutcheon, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

50. If you are reasonably satisfied from all of the evidence in the case that defendant, M. L. Hall, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

51. If you are reasonably satisfied from all of the evidence in the case that defendant, Bruce Barnett, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that

such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

52. If you are reasonably satisfied from all of the evidence in the case that defendant, H. M. Baum, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force

or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

53. If you are reasonably satisfied from all of the evidence in the case that defendant H. K. Parker at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

55. If you are reasonably satisfied from all of the evidence in the case that defendant, W. L. Grissom, at the time alleged in plaintiff's amended com-

plaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaitiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

57. If you are reasonably satisfied from all of the evidence in the case that defendant R. H. Letchman at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another

person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratifed the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

58. If you are reasonably satisfied from all of the evidence in the case that defendant, William F. Pennington, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against each defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

59. If you are reasonably satisfied from all of the evidence in the case that defendant, Howard Eugene Anderson, at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plantiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

60. If you are reasonably satisfied from all of the evidence in the case that defendant Oliver C. Breedlove at the time alleged in plaintiff's amended complaint was a member of an association or organization participating or interested in a labor dispute involving a work stoppage of plaintiff's employees, then I charge you that you cannot find in favor of plaintiff and against such defendant unless you are reasonably satisfied from all of the evidence in the case that such defendant actually participated in

causing other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another person who caused other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

61. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against A. R. Thomas unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

62. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. M. Weldon unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

63. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against C. L. McCutcheon unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to

perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

64. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against M. L. Hall unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

65. Getlemenn of the jury, I charge you that you cannot find for the plaintiff and against Bruce Barnett unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees

of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

66. Genelemen of the jury, I charge you that you cannot find for the plaintiff and against William F. Pennington unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

67. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against Howard Eugene Anderson unless you are reasonably satisfied from all the evidence in the case that such defendants

actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

68. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against J. B. Otts, Jr., unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

69. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against H. M. Baum unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force, or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

70. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against H. K. Parker unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

72. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against W. L. Grissom unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

74. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against R. H. Letchman unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform

their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

75. Gentlemen of the jury, I charge you that you cannot find for the plaintiff and against Oliver C. Breedlove unless you are reasonably satisfied from all the evidence in the case that such defendant actually participated in causing other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or actually authorized another person to cause other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff, or ratified the act of another who caused other employees of plaintiff, by means of intimidation or threats of force or violence not to perform their duties with plaintiff after actual knowledge thereof.

Given.

GROOMS,
J.

PLAINTIFF'S CHARGES REFUSED.

(Title Omitted.)

1. The Court charges you that, if you believe the evidence in this case, your verdict should be in favor of the plaintiff.

Refused.

GROOMS,
J.

2. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Howard E. Anderson.

Refused.

GROOMS,
J.

3. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. M. Baum.

Refused.

GROOMS,
J.

4. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Bruce Barnett.

Refused.

GROOMS,
J.

5. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. O. Bentley.

Refused.

GROOMS,
J.

6. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, O. C. Breedlove.

Refused.

GROOMS,
J.

7. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Brown, Jr.

Refused.

GROOMS,
J.

8. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. B. Bryam.

Refused.

GROOMS,
J.

9. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. D. Dismukes.

Refused.

GROOMS,
J.

10. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. L. Grissom.

Refused.

GROOMS,
J.

11. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, M. L. Hall.

Refused.

GROOMS,
J.

12. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Austin E. Hicks.

Refused.

GROOMS,
J.

13. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, R. M. Letchman.

Refused.

GROOMS,
J.

14. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, C. L. McCutcheon.

Refused.

GROOMS,
J.

15. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. B. Otts.

Refused.

GROOMS,
J.

16. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, H. K. Parker.

Refused.

GROOMS,
J.

17. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. F. Pennington.

Refused.

GROOMS,
J.

18. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, Howard E. Southerland.

Refused.

GROOMS,
J.

19. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, R. A. Sutterlin.

Refused.

GROOMS,
J.

20. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, A. R. Thomas.

Refused.

GROOMS,
J.

21. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Weldon.

Refused.

GROOMS,
J.

28. The Court charges you that if there is a labor agreement between parties to a labor dispute which provides methods of settlement of disputes and grievances, it is the duty of both parties thereto to resort to its terms to settle or adjust such a grievance or dispute.

Refused.

GROOMS,
J.

29. The Court charges you that if you believe the evidence in this case there was no labor dispute within the meaning of the Railway Labor Act between the plaintiff and its employees on October 23, 1955.

Refused.

GROOMS,
J.

30. The Court charges you that if you believe the evidence in this case there was no labor dispute within the purview of the Railway Labor Act existing between this plaintiff and its employees at the time and on the occasions complained of in this case.

Refused.

GROOMS,
J.

31. The Court charges you that if you believe the evidence in this case, there was no labor dispute within the meaning of Section 6 of the Norris-LaGuardia Act existing between the plaintiff and its employees on the occasion complained of.

Refused.

GROOMS,
J.

36. The Court charges you that the fact of membership in a labor organization does not afford an individual immunity in a Court of law from personal responsibility for his own tortious and wrongful acts.

Refused.

GROOMS,
J.

37. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance

and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike.

Refused.

GROOMS,
J.

38. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike and those participating therein were guilty of illegal conduct in respect of anything they may have done to further such strike.

Refused.

GROOMS,
J.

39. The Court charges you that if you believe the evidence in this case, the strike occurring at or about 9:00 o'clock P.M. on October 23, 1955, against the plaintiff at its Boyles Yards was an illegal strike.

Refused.

GROOMS,
J.

40. The Court charges you that if you believe the evidence in this case, the defendants, J. M. Brown, Jr., J. B. Otts, Jr., H. M. Baum, A. R. Thomas, J. M. Weldon, C. L. McCutcheon, W. L. Grissom, M. L. Hall, R. H. Letchman, Bruce Barnett, Howard E. Anderson and Oliver C. Breedlove were not members of an association or organization participating or interested in a labor dispute on the occasion complained of within the meaning of Section 6 of the Norris-LaGuardia Act.

Refused.

GROOMS,
J.

41. The Court charges you that the employees of the plaintiff have the right to organize themselves into a brotherhood or association for their mutual protection and betterment and, having done so, to enter into a contract with the plaintiff as an employer, governing the terms of their employment and the adjustment of grievances or disputes arising out of their relationship as employer and employees, and it is the duty of both parties to such a contract to abide by its terms and the law of the land with respect to the settlement of any such dispute or grievance which may arise under such contract.

Refused.

GROOMS,
J.

43. The Court charges you that if you should find that the strike which began at or about 9:00 o'clock P.M. October 23, 1955, at plaintiff's Boyles Yard was

a legal and proper strike, but that these defendants, or some of them, did or participated in the doing of acts of violence or made threats of violence in the prosecution of such strike, such defendants would not be afforded immunity from responsibility for such acts or threats, by reason of the fact that they were committed in connection with a legal and lawful strike.

Refused.

GROOMS,
J.

44. The Court charges you, gentlemen of the jury, that the defendants in this case who were members of the Brotherhood of Locomotive Firemen and Enginemen were parties to a contract under the terms of which local grievances not settled with local officials of the railroad company were required to be handled by the general officials of the union with the general officials of the railroad company, and were required to be handled by such general officials in the manner prescribed by the Railway Labor Act.

Refused.

GROOMS,
J.

45. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or some of them caused a "wildcat" or illegal strike not sponsored or approved by any labor organization or association authorized to represent the plaintiff's employees or some of them, then such

defendants are not entitled to the benefit of any law protecting or guaranteeing the right to strike.

Refused.

GROOMS,
J.

46. I charge you, gentlemen of the jury, that the plaintiff does not under the issues in this case seek to hold responsible or liable any defendant because of membership in or the holding of office in any association or organization participating or interested in a labor dispute.

Refused.

GROOMS,
J.

47. I charge you that under the evidence in this case none of the defendants was acting as a member or officer of an association or organization participating or interested in a labor dispute at the time of the commission of the various acts committed or alleged to have been committed by the defendants and causing the interruption of plaintiff's business.

Refused.

GROOMS,
J.

48. I charge you, gentlemen of the jury, that under the issues in this case it is not sought to hold any defendant responsible or liable because of membership in or the holding of office in any association

or organization participating or interested in a labor dispute.

Refused.

GROOMS,
J.

49. I charge you that under the issues in this case it is not sought to hold any of the defendants responsible or liable for the unlawful acts of any officer, member or agent of any association or organization participating or interested in a labor dispute committed within the line and scope of his authority as such officer, member or agent but that on the contrary the defendants are charged as individual persons who have joined together to commit and have committed the acts with which they are charged.

Refused.

GROOMS,
J.

50. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants acted as individuals in the commission of the acts they are charged with in this case rather than as members in or officers of any labor association or organization participating or interested in a labor dispute then Section 6 of the Norris-LaGuardia Act does not protect them.

Refused.

GROOMS,
J.

51. I charge you that no association or organization participating or interested in a labor dispute is a party to this case and that no defendant is sought to be held liable or responsible in this case on account of or on the basis of such defendant's membership in or the holding of office in any such association or organization.

Refused.

GROOMS,
J.

52. I charge you that the contract between the Louisville and Nashville Railroad Company and the Brotherhood of Locomotive Firemen and Enginemen contains provisions relating to the settlement of disputes and grievances by a procedure designed to prevent disruption of business and that such contract is construed by the Court to prohibit a strike over such disputes or grievances without following the procedure outlined in said contract.

Refused.

GROOMS,
J.

53. I charge you that the contract between the Louisville and Nashville Railroad Company and the Brotherhood of Locomotive Firemen and Enginemen in effect in October of 1955 prohibited a strike over disputes and grievances for which settlement procedures were provided and that a strike over a dis-

pute or grievance covered by such provisions would be an illegal strike.

Refused.

GROOMS,
J.

54. I charge you that under Section 32(f) of the Agreement between the Louisville and Nashville Railroad and its Locomotive Firemen and Hostlers in effect in October of 1955 grievance procedures were provided for local grievances and difference of opinion and that a strike over such a local grievance or difference of opinion in violation of that agreement is illegal.

Refused.

GROOMS,
J.

55. I charge you that Section 32(f) of the Agreement in effect in October of 1955 between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers prohibited by implication a strike over a local grievance or difference of opinion while such local grievance or difference of opinion was in the process of being handled between Company officials and Union officers and that a strike in violation thereof over such a grievance or difference of opinion would be an illegal strike.

Refused.

GROOMS,
J.

56. I charge you that Section 32(f) of the Agreement in effect in October of 1955 between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers prohibited by implication a strike over a local grievance or difference of opinion while such local grievance or difference of opinion was in the process of being handled between Company officials and Union officers and that if you are reasonably satisfied by a preponderance of the evidence that the dispute over the outside hostler helper jobs was being handled between Company officials and Union officers as provided by said agreement then you must find the strike on account of such grievance illegal.

Refused.

GROOMS,
J.

57. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was illegal.

Refused.

GROOMS.
J.

58. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs at the Boyles Yard was over a local grievance or difference of opinion and was under Sections 32(f) and 32(g) of the agreement in effect between the Louisville and Nashville Railroad Company was illegal provided you are reasonably satisfied by a fair proponderance of the evidence that the matter was being

taken up between company officials and union officials as provided by said sections.

Refused.

GROOMS,
J.

59. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was in violation of Sectons 32(f) and 32(g) of the agreement then in effect between the Louisville and Nashville Railroad Company and its Locomotive Firemen and Hostlers and illegal.

Refused.

GROOMS,
J.

60. I charge you that the strike against the plaintiff over the abolition of the hostler helper jobs was in violation of the provisions of the Railway Labor Act and illegal.

Refused.

GROOMS,
J.

61. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a local dispute or difference of opinion and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against the plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of these jobs, then you must find such strike was illegal under the pro-

visions of Section 32 of the agreement then in effect between the plaintiff and the Brotherhood of Railroad Firemen and Enginemen.

Refused.

GROOMS,
J.

62. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal.

Refused.

GROOMS,
J.

63. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of the outside hostler helper jobs, then you must find that such strike was illegal.

Refused.

GROOMS,
J.

64. I charge you that the defendants are charged with the commission of acts in furtherance of a combination or conspiracy to interrupt plaintiff's railroad business by use of violence and threats of force and violence and that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants, or any of them, by acts of violence or threats of force and violence did proximately cause an interruption of the plaintiff's business, then your verdict should be for the plaintiff and against the defendants found to have committed such acts or engaged in such threats.

Refused.

GROOMS,
J.

65. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence in this case that the defendants or any of them committed acts of violence or threatened to commit acts of force and violence and by such acts or threats proximately caused the interruption of plaintiff's operation as a railroad to its injury, then you must find for the plaintiff and against such defendants.

Refused.

GROOMS,
J.

66. I charge you, gentlemen of the jury, that conspiracy may be proved by circumstantial evidence.

Refused.

GROOMS,
J.

67. I charge you, gentlemen of the jury, as a point of the law in this case, if you are reasonably satisfied from the evidence that two or more of the defendants, by prearrangement, entered upon a common purpose, either to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, then I charge you such combination would be, in law, a conspracy, and if you are further reasonably satisfed from the evidence that the defendant O. C. Breedlove was not a party to the original agreement, but that he joined in with them and committed acts which were in furtherance of the original purpose, said O. C. Breedlove, to the extent, if any, that the orginal parties to such conspiracy are liable for such damages as you may be reasonably satisfied were proximately caused by acts committed pursuant to said purpose, is jointly and severally liable as though he had been a party to the original conspiracy.

Refused.

GROOMS,
J.

68. I charge you, gentlemen of the jury, as a point of the law in this case, if you are reasonably satisfied from the evidence that two or more of the defendants, by prearrangement, entered upon a common purpose, either to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, then I charge you such combination would be, in law, a conspiracy, and if you are further reasonably satisfied from the evidence that the defendant W. F. Pennington was not a party to the original agreement, but that he joined in with them and committed acts which were in furtherance of the original

purpose, said W. F. Pennington, to the extent, if any, that the original parties to such conspiracy are liable for such damages as you may be reasonably satisfied were proximately caused by acts committed pursuant to said purpose, is jointly and severally liable as though he had been a party to the original conspiracy.

Refused.

GROOMS,
J.

69. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that any defendant threatened or intimidated by threats of force or violence any other employee of plaintiff and that as a proximate consequence thereof plaintiff was injured in the manner alleged, then your verdict must be for the plaintiff and against such defendant.

Refused.

GROOMS,
J.

70. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or any two or more of them conspired or combined to injure plaintiff in the manner alleged and that pursuant to said conspiracy or combination any member or co-conspirator threatened, or intimidated by threats of force and violence, any other employee of plaintiff and as a proximate consequence thereof the plaintiff was injured in the manner alleged, then the act of such member or co-conspirator is the act of all of the members of the said con-

spiracy or combination and your verdict should be for the plaintiff and against the defendants found to have so conspired or combined.

Refused.

GROOMS,
J.

71. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or any two or more of them conspired or combined to injure plaintiff in the manner alleged and that pursuant to said conspiracy or combination any member thereof threatened or intimidated other employees of plaintiff and that as a consequence thereof plaintiff was injured in the manner alleged, then your verdict must be for the plaintiff and against such defendants as are found to have conspired or combined in such manner.

Refused.

GROOMS,
J.

72. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that any defendant did any act in furtherance of a conspiracy to injure plaintiff in the manner alleged and that as proximate consequence thereof plaintiff was injured as alleged, then your verdict must be for the plaintiff and against such defendant.

Refused.

GROOMS,
J.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant Oliver C. Breedlove, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant Howard Eugene Anderson, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant William F. Pennington, Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956

(Title Omitted.)

We, the jury, find for the defendant Bruce Barnett Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant J. B. Otts, Jr. Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant R. H. Letchman Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant M. L. Hall Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant W. L. Grissom Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant C. L. McCutcheon Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury find for the defendant J. M. Weldon Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant H. K. Parker Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury find for the defendant A. R. Thomas Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant H. M. Baum Oct. 2, 1956.

THOMAS HAGAN,
Foreman.

VERDICT.

Filed Oct. 2, 1956.

(Title Omitted.)

We, the jury, find for the defendant J. M. Brown, Jr. October 2, 1956.

THOMAS HAGAN,
Foreman.

CLERK'S COURT MINUTES.

(Title Omitted.)

Tuesday, October 2nd, 1956.

This case having duly come on for hearing or trial on the 24th day of September upon complaint as amended and answers as amended as to the parties

above-named, and there appearing Lange, Simpson, Robinson & Somerville; Gibson & Gibson, for plaintiff; Jackson, Pettus, Rives & Peterson; Macey Taylor, for defendant; and thereupon the issues raised having been duly presented, argued and submitted to the Court (and jury), it was, on October 2, 1956, decided and adjudged by the Court as follows:

order striking H. E. Southerland and R. A. Sutterlin as parties defendant upon motion of plaintiff at the close of all the evidence; upon verdicts of the jury finding separately for the defendants, judgment entered for the defendants, J. M. Brown, Jr.; H. M. Baum; A. R. Thomas; H. K. Parker; J. M. Weldon; C. L. McCutcheon; W. L. Grissom; M. L. Hall; R. H. Letchman; J. B. Otts, Jr.; Bruce Barnett; William F. Pennington; Howard Eugene Anderson; and Oliver C. Breedlove,

and taxing costs against plaintiff.

WILLIAM E. DAVIS,
Clerk.
By DAN STRONG,
Deputy Clerk.

Birmingham, Alabama.

GROUNDS OF OBJECTION TO COURT'S REFUSAL TO GRANT CERTAIN INSTRUCTIONS REQUESTED IN WRITING BY PLAINTIFF.

Filed Oct. 5, 1956.

(Title Omitted.)

Comes the plaintiff pursuant to agreement of counsel and by leave of Court and assigns grounds of objection to the Court's refusal to give to the jury certain written charges or instructions requested by plaintiff as follows:

I.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested charges 31, 40, 46, 47, 48, 49, 50 and 51, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge correctly states the law applicable to matters fairly raised by the evidence.

4. Said charge, together with the others hereinabove enumerated related to the applicability of Section 6 of the Norris-LaGuardia Act (29 U.S. Code Sec. 106) to this case and plaintiff objects, without waiving its objection heretofore made to the Court's charge to the effect that said Section applies to this case, to

the refusal to grant the enumerated requested written charges on the ground that the jury should have been instructed as to the conditions under which said Section might apply and to the findings necessary as a prequisite to such applicability.

5. Section 6 of the Norris-LaGuardia Act (Title 29 U.S. Code, Sec. 106) does not apply to this case.

6. The plaintiff is entitled to have the jury instructed that no defendant is sought to be held responsible because of his membership in or his holding of office in any association or organization participating or interested in a labor dispute.

7. The plaintiff is entitled to have the jury instructed that no association or organization participating or interested in a labor dispute is a party to the cause.

8. The plaintiff is entitled to have the jury instructed that the defendants are sued as individuals acting on their own individual behalf and not as members of a labor organization or association participating or interested in a labor dispute.

9. The plaintiff is entitled to have the jury instructed that the defendants were not members of an association or organization participating or interested in a labor dispute on the occasion complained of.

10. The plantiff is entitled to have the jury instructed that there was no labor dispute within the meaning of said Section 6 of the Norris-LaGuardia Act at the time of the acts complained of.

II.

The plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested charges 39, 45 and 57, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states a correct proposition of law applicable to issues fairly raised by the evidence in this case.

4. The plaintiff is entitled to have the jury instructed as to the legality or illegality of the strike.

5. The plaintiff is entitled to have the jury instructed that the strike was illegal. The strike against plaintiff was, under the evidence in this case, illegal and the plaintiff was entitled to have the jury so instructed.

6. A wildcat strike is, under the law, illegal and those proximately causing such a strike are not entitled to the protection of laws otherwise guaranteeing and protecting the right to strike and the plaintiff is entitled to have the jury so insructed.

7. Under the evidence in the case, there was grievance machinery provided under a contract between palintiff and a labor organization legally representing its employees and no employee or group of employees

had the right in violation of said agreement to cause a wildcat strike and plaintiff is entitled to have the jury so instructed.

III.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give charges 28, 37, 38, 41, 44, 52, 53, 54, 55, 56, 58, 59 and 61, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states correctly a proposition of law applicable to issues fairly raised by the evidence in this case.

4. Said charge and all others enumerated herein above with it relates to the illegality of a strike over a grievance or disagreement for which specific grieveance procedures are provided under a contract between an employer and the duly authorized representative of its employees and plaintiff is entitled to have the jury instructed that a strike under such circumstances is illegal.

5. The plaintiff is entitled to have the jury instructed that a strike over a matter for which specific grievance procedures are provided in a contract between an employer and its employees' representative is illegal and deprives those causing said strike of the benefit and protection of any law or rule of law otherwise protecting and guaranteeing the right to strike.

6. The plaintiff is entitled to have the jury instructed that employees may give up by contract their right or privilege to strike over certain grievances and that having done so a strike over any such grievance is illegal.

7. The plaintiff is entitled to have the jury instructed that as a matter of law a contract providing grievance machinery for certain defined grievances or disagreements is to be interpreted or construed to prohibit a strike over such a grievance or disagreement so as to render nugatory such contract provisions.

8. The plaintiff is entitled to instructions from the Court interpreting or construing the contract between the plaintiff and the formen and hostlers which contract is in evidence and provided machinery for the handling of grievances of which the dispute over the hostler helper jobs was one. A contract providing for the orderly settlement of certain grievances or disagreements should be construed or interpreted as prohibiting a strike over such grievances or disagreements.

International Brotherhood of Teamsters, etc. v. W. L. Mead, Inc., 230 F 2d 573.

United Construction Workers v. Haislip Baking Co. 223 F 2d 872.

NLRB v. Sands, 306 U. S. 332.

NLRB v. Dorsey, 179 F 2d 589.

IV.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested written charges 60, 62 and 63, separately and severally, the following:

1. Said charge is correct as a matter of law.

2. Said charge relates to matters fairly raised by the evidence in this case.

3. Said charge states correctly a proposition of law applicable to issues fairly raised by the evidence in this case.

4. Said charge correctly defined the dispute, if any, a "minor" dispute and the plaintiff is entitled to have the jury so charged.

5. A strike over a minor dispute is, under the Railway Labor Act, an illegal strike and the plaintiff is entitled to have the jury so instructed.

6. The plaintiff is entitled to have the jury instructed as a matter of law that the grievance over the abolition of the hostler helper jobs was such a grievance as was under the provisions of the Railway Labor Act to be determined in accordance with established procedure and, if necessary, to be referred to the National Railroad Adjustment Board and that a strike over such a minor grievance was illegal.

Chicago River and Indiana Railroad Co. v. Brotherhood of Railroad Trainmen, 229 F 2d 926.

V.

Plaintiff assigns, separately and severally, as grounds of objection to the Court's refusal to give requested written charges 17, 20 and 21, separately and severally, the following:

1. Plaintiff proved by substantial evidence not disputed by any credible testimony the actual participation by the defendant named in said charge in intimidation of and threats directed at plaintiff's employees as a direct consequence of which plaintiff was injured as alleged.

2. Plaintiff proved by substantial evidence, not disputed by any credible testimony, actual acts of violence on the part of the defendant named in said charge, and as a proximate consequence of which plaintiff was injured as alleged.

3. The defendant named in said charge admitted his participation in acts of violence, intimidation of or threats drected at other employees and plaintiff proved it was injured as alleged as a proximate result thereof.

JAMES A. SIMPSON,
ROBERT McD. SMITH,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing was served upon Hon. R. Macey Taylor, by mailing a copy of the same, postage prepaid, to his office in the Frank Nelson Building, Birmingham, Alabama, this 5th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

I hereby certify that a copy of the foregoing was served upon Hon. Erle Pettus, Jr. by mailing a copy of the same, postage prepaid to his office in the Massey Building, Birmingham, Alabama, this 5th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

MOTION FOR NEW TRIAL.

Filed Oct. 10, 1956.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned, and the judgment rendered there on, and to grant to the plaintiff a new trial and for grounds of said motion, the plaintiff sets down and assigns, separately and severally, the following, viz:

1. The said verdict is contrary to the law of the case.

2. The said verdict is contrary to the evidence in the case.

3. The said verdict is against the weight of the evidence.

4. The said verdict is contrary to the law and to the evidence.

5. For that the said verdict was procured by reason of partiality of the jury in favor of the defendants and against the plaintiff.

6. The said verdict is the result of prejudice, bias or passion on the part of the jury.

7. The said verdict is so palpably erroneous as to indicate bias, prejudice or some other improper influence on the part of the jury.

8. The Court erred in instructing the jury, over timely objection on the part of the plaintiff, as follows:

"Now, gentlemen, the law, that is the basic or substantive law, that controls this case is the law of Alabama, except as modified by a provision of the Federal Statutes, found in what is known as the Norris-LaGuardia Act.

This railroad, as it has averred here, is engaged in interstate commerce, and Congress, of course, has a right to control, or has a right to legislate with respect to instrumentalities of interstate commerce.

Now the Section that I have reference to is Section 106 of Title 29 of the United States Code. And it reads as follows:

'No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any Court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof.'

Now, gentlemen, you keep that Statute in mind when I charge you with respect to a conspiracy."

9. The Court erred in instructing the jury in effect that Section 106 of Title 29 of the United States Code is applicable to this case.

10. The Court committed prejudicial error against the interests of the plaintiff in refusing to grant plaintiff's motion for a directed verdict at the close of all the evidence.

11. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections to questions asked various witnesses with respect to violence and intimidation in connection with earlier labor disputes or strikes.

12. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which ruling of the Court the plaintiff then and

there did duly except on repeated occasions to questions propounded to various witnesses by the plaintiff relating to physical violence, sabotage and intimidation during a strike affecting plaintiff within the same geographic area as involved in this case during the month of August, 1955.

13. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which ruling of the Court the plaintiff then and there did duly except on repeated occasions to questions propounded to various witnesses by the plaintiff relating to physical violence, sabotage and intimidation during a strike affecting plaintiff wthn the same geographic area as involved in this case between the months of March and May, 1955.

14. The Court committed prejudicial error against the interests of the plaintiff in sustaining objections, to which exception was duly made to questions calculated to place before the jury the background of violence within which the various acts of the defendants were committed.

15. The Court committed prejudicial error against the interest of the plaintiff in refusing to permit plaintiff to prove the acts of violence and intimidation and the general knowledge thereof related to the so-called 58-day strike.

16. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"17. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, W. F. Pennington."

17. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"20. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, A. R. Thomas."

18. The Court admitted prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"21. The Court charges you that, if you believe the evidence in this case, you should find a verdict in favor of the plaintiff and against the defendant, J. M. Weldon."

19. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"50. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants acted as individuals in the commission of the acts they are charged with in this case rather than as members in or officers of any labor associa-

tion or organization participating or interested in a labor dispute then Section 6 of the Norris-LaGuardia Act does not protect them."

20. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"51. I charge you that no association or organization participating or interested in a labor dispute is a party to this case and that no defendant is sought to be held liable or responsible in this case on account of or on the basis of such defendant's membership in or the holding of office in any such association or organization."

21. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"45. I charge you that if you are reasonably satisfied by a fair preponderance of the evidence that the defendants or some of them cause a "wildcat" or illegal strike not sponsored or approved by any labor organization or association authorized to represent the plaintiff's employees or some of them, then such defendants are not entitled to the benefit of any law protecting or guaranteeing the right to strike."

22. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"28. The Court charges you that if there is a labor agreement between parties to a labor dispute which provides methods of settlement of disputes and grievances, it is the duty of both parties thereto to resort to its terms to settle or adjust such a grievance or dispute."

23. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"37. The Court charges you that if you believe the evidence in this case and are reasonably satisfied therefrom that the grievance over which the defendants claim to have struck was a grievance for the settlement or adjustment of which there existed a contract between the men affected by such grievance and their employer, then a strike called to coerce the employer with respect to such grievance, prior to the orderly processing of the grievance, was an illegal strike."

24. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"61. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a local dispute or difference of opinion and that if you are reasonably satisfied by a fair preponderance of the evidence that the strike against the plaintiff from October 23 to October 26, 1955, inclusive, was over the abolition of these jobs, then you must

find such strike was illegal under the provisions of Section 32 of the agreement then in effect between the plaintiff and the Brotherhood of Railroad Firemen and Enginemen."

25. The Court committed prejudicial error against the interests of the plaintiff in refusing to give to the jury the following written charge duly requested by the plaintiff:

"62. I charge you that the dispute or disagreement over the abolition of the outside hostler helper jobs was a so-called minor dispute for the settlement of which provision is made under the Railway Labor Act by the National Railroad Adjustment Board and that a strike over such a minor dispute is in violation of that Act and illegal."

26. The Court committed prejudicial error against the interests of the plaintiff in dismissing, upon motion of the defendants, Count One of the plaintiff's complaint.

27. The Court committed prejudicial error against the interests of the plaintiff in dimissing, upon motion of the defendants, Count Two of the plaintiff's complaint.

LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing Motion for New Trial has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by delivering a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 10th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing Motion for New Trial has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by delivering a copy of same to his office in the Massey Building, Birmingham, Alabama, this 10th day of October, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff.

OBJECTION AND MOTION TO STRIKE.

Filed Nov. 15, 1956.

(Title Omitted.)

Come the defendants, separately and severally, by their respective attorneys, and hereby object separately and severally to the filing by plaintiff of the amendment to motion for ne trial and/or in the alternative move the Court to strike the amendment to motion

for new trial filed by plaintiff in this cause on, towit, November 14, 1956, and as grounds therefor set down the following, separately and severally, to-wit:

1. The amendment to motion for new trial was not timely filed.

2. The Court has no jurisdiction of the amendment to motion for new trial.

3. The amendment to motion for new trial was not filed in accordance with the Federal Rules of Civil Procedure.

4. The amendment to motion for new trial is contrary to the provisions of the Federal Rules of Civil Procedure.

5. The Court lost jurisdiction to consider any motion for new trial or any amendment thereto unless same was served "not later than ten days after the entry of the judgment".

6. Rule 59 of the Federal Rules of Civil Procedure prohibits the filing of plaintiff's motion for new trial.

7. Rule 59 of the Federal Rules of Civil Procedure pronibits the filing of any affidavits appended to the amendment to motion for new trial.

8. The amendment to motion for new trial shows on its face that it is filed more than ten days after the entry of the judgment and is not timely filed under Rule 59 of the Federal Rules of Civil Procedure.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
R. MACEY TAYLOR,
(R. Macey Taylor).
JACKSON, RIVES, PETTUS & PETERSON,
Of Counsel.

Certificate of Service.

A copy of the foregoing objections and motion to strike has been served upon the Hon. James A. Simpson, attorney for plaintiff, on this the 15th day of November, 1956.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

AMENDMENT TO MOTION FOR NEW TRIAL.

Filed Nov. 15, 1956.

(Title Omitted.)

Comes the plaintiff and leave of Court being first had and obtained amends its Motion for New Trial heretofore filed in this cause by adding thereto the following additional grounds of which it did not have knowledge or proof in time to include in its original motion, viz:

28. For that the defendants and certain persons acting in collusion and concert with them and as

their agents, both before, during and after the trial of this cause, have by threats and other apt means of intimidation so frightened and terrorized persons who would have been witnesses to material facts on the trial of this cause or would be witnesses in support of this motion for new trial that the plaintiff was on the trial of this cause and now is deprived of the benefit of such testimony to its substantial detriment and prejudice.

29. For that witnesses who testified for the plaintiff on the trial of this cause have, since the trial of this cause, been f ghtened, intimidated and terrorized by threats of violence, show of force and use of menacing words and acts by the defendants and by those acting in concert and collusion with them and as their agents to the substantial detriment and injury of the plaintiff in the trial and conduct of this cause.

30. For that the defendants have by a long course of threats of injury and violence so intimidated and coerced the witnesses for the plaintiff in this cause that said witnesses were unwilling to and failed and refused to testify to certain material facts known to them to the substantial injury and detriment of the plaintiff in the trial of this cause.

31. For that certain of the defendants and other persons acting in concert and collusion with them and as their agents have during and subsequent to the trial of this cause, initiated and continued a course of threats of violence and intimidation against certain witnesses who testified or were subpoenaed to testify for the plaintiff on the trial of this cause all in con-

tempt of the dignity and authority of this Honorable Court and to the substantial injury and detriment of the plaintiff in the conduct of this litigation.

32. For that, subsequent to the conclusion of the trial of this cause, it came to the attention of the plaintiff and the plaintiff now charges that an improper and illegal approach was made to a member of the jury before whom the case was on trial with respect to the case and same was discussed with said juror and he was requested to favor the defendants with his verdict, all to the great injury, detriment and damage of the plaintiff.

33. For that the defendants, or some of them and others acting in collusion and concert with them and as their agents, did during the course of this trial and before its conclusion and have continuously subsequent thereto, engaged in the use of insulting and opprobrious language toward witnesses for the plaintiff and have engaged and encouraged others to engage in coercive and oppressive conduct toward witnesses for the plaintiff and have engaged in reprisals and conduct tending to a breach of the peace toward witnesses for the plaintiff, all to the damage, injury and detriment of the plaintiff and against the dignity and authority of this Honorable Court.

H. G. BREETZ,
(H. G. Breetz),
GIBSON & GIBSON,
(Gibson & Gibson),
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
(Lange, Simpson, Robinson & Somerville),
Attorneys for Plaintiff.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel for Plaintiff.

A copy of the foregoing amendment to the motion for new trial has been served upon the Hon. R. Macey Taylor and upon the Hon. Erle Pettus, Jr., attorneys for defendants, on this the 14th day of November, 1956, together with copies of the affidavits of T. B. Wilder and E. L. Sexton and C. F. Hobson, offered in support thereof.

J. A. SIMPSON,
Of Counsel for Plaintiff.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said County in said State, Ted B. Wilder, who is known to me, and who being by me first duly sworn upon his oath deposes and says as follows:

I am fifty-two years of age, am a locomotive engineer for Louisville and Nashville Railroad Company, and have worked for the company for thirty-three years. I was ordered as a witness for the plaintiff in the case of Louisville and Nashville Railroad Company v. J. M. Brown, Jr., et al., which was tried

in the United States District Court in Birmingham, Alabama, September 24 to October 1, 1956, both inclusive. On Wednesday, September 26, I testified concerning an incident which happened at Montgomery, Alabama on September 25, 1955, involving H. D. Dismukes, J. B. Byram and A. E. Hicks, three of the defendants.

On October 5, 1956, after the jury had returned a verdict for the defendants, I drove along Vanderbilt Road en route to work, at about 2:45 P.M. When I arrived near the Round House gate at Boyles, I slowed my car to turn in, and saw O. C. Breedlove, one of the defendants in the case, standing in front of the Rex Barbecue stand. As I started past he shouted at me, "Hello, you damned yellow pimp." I turned my car around and drove back to where he was and stopped. Breedlove said in a very menacing voice: "You're nothing but a damned yellow Kentucky pimp." I told him I didn't want to have any trouble with him, and he replied: "You don't seem to be satisfied with the way the case came out." I then told him, in substance, that I had only testified to the truth about what had happened, and that I did not know nor testify as to anything at all about him or his activities during the time the October strike was going on. He replied that that didn't make a damn, as he and all the other defendants had been charged with conspiracy, and when I testified against any of them, I had been testifying against him. He then said: "I'm warning you, if you ever write me up about anything, I will catch you off the company property and it will be too bad for you, because I'm going to stomp your God damned guts into the ground."

On another occasion, since I testified, near the engineers' and firemen's washroom, Breedlove and H. M. Baum, one of the other defendants, made a derogatory remark to me, calling me a "company pimp".

Because of the incidents mentioned, as well as other threats which have been repeated to me, I have felt obliged to obtain a permit and to buy a pistol, in order to protect myself against the possibility of serious bodily harm.

Shortly after the jury was discharged in the case, I was assigned to a job on Avenue F, and Clerk Joe Taylor started a conversation with me about the Brown case. He expressed satisfaction with the verdict, and told me that he had been at Court as a spectator on Monday, October 1, and had walked down the steps with two of the jurymen after they were excused for the night. He stated that he had told these two jurymen that he hoped they would do anything they could to turn the defendants loose.

TED B. WILDER.

Sworn to and subscribed before me this 22nd day of October, 1956.

WHITE GIBSON, JR.,
Notary Public.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for said county in said state, E. L.

Sexton, who is known to me, and who being by me first duly sworn on oath deposes and says as follows:

On Sunday night, September 30, 1956, while the trial of the case of Lousville and Nashville Railroad Company vs. J. M. Brown, Jr., et al., was in progress, I went into Rex Barbecue Stand on Vanderbilt Road to get some coffee. As I was leaving, I passed near a booth where Reese Thomas, H. M. Baum and Bruce Barnett, three of the defendants were seated with a fireman named C. S. Massey. The four got up and followed me to and outside the door, and one of them said, "you don't need to run". When I did not answer, Thomas said, "He has his hand in his pocket." I took my hand out of my pocket and walked on, with the other men following. On the outside, Barnett called to me, "Sexton, you told a lie about me on the witness stand". I replied that I had not told anything but the facts about him or anyone else. He then said, "Well, we are not going to bother you now, but we will get you in a night or two." During this conversation, two of the four men, Baum and Barnett stayed together, while Thomas and Massey moved off a little way from them.

After the trial was over, because of the threat made by these men, and of talk that was going around, I made application to the Sheriff for a permit to carry a pistol to protect myself.

A few nights later, about 11:00 P.M., I was alone in the washroom next to the engine dispatcher's office, where a negro dispatcher was on duty. A lighted firecracker was thrown from the room adjacent on the other side from the dispatcher's office into the room

where I was, and exploded with a loud report. I immediately went into this room, and found Baum, Thomas and Barnett there together. There was no one else in the room. None of them said anything to me, and I only looked at them.

There was a delay in the actual issuance of my pistol permit, although I was told that it would be issued as soon as I could get a pistol, and supply the serial number of it. The particular weapon I wanted, for some reason, could not be gotten promptly. While I was waiting for it, I carried a pair of "knucks" in case the group should attack me. On Wednesday, I again inquired about the pistol, and was told by the dealer that he was expecting it, but had not yet received it. He lent me a revolver to carry until mine could be gotten. On that night when I left home I took this weapon with me, not telling my wife about it for fear of worrying her. It was necessary for me to divert her attention and act quickly, and in my haste I forgot that I had the "knucks" in my pocket. When I arrived at Rex Barbecue and went in to get my thermos bottle filled with coffee, I saw a policeman leaving by another door. I saw Baum and Thomas in or near the place, but had no words with them. I left there in my car, with the revolver on the seat, and drove to the street that turns off Vanderbilt Road toward the Master Mechanic's gate. This is the place I customarily enter to go on my job. Between Vanderbilt Road and the gate I was stopped by two Birmingham policemen who searched me, finding the "knucks" in my hip pocket. This was the first time I realized I had them. They asked me whether I had a gun and I told them I did, on the seat of my car. They said they had had a tip or complaint about it, and

placed me under arrest, taking me to the City jail. I was released on bond after being held for a little over an hour, and instructed to appear in Court that morning at 9:00. At the request of Mr. White Gibson, Jr., who met me at Court, the Judge continued my case for one week, resetting it for October 17, 1956.

E. L. SEXTON.

Sworn to and subscribed before me this 11th day of October, 1956.

LUCILE ADAMS,
Notary Public.

Filed Nov. 15, 1956.

State of Alabama,
Jefferson County.

Before me, the undersigned authority in and for said county in said state, personally appeared C. F. Hobson, who is known to me, and who being by me first duly sworn upon oath, deposes and says as follows:

I was one of the witnesses for the plaintiff in the trial of the case of Louisville and Nashville Railroad Company vs. J. M. Brown, Jr., et al., which began on September 24, 1956, in the United States District Court at Birmingham. A day or two following the trial, while I was crossing Vanderbilt Road enroute from the Boyles Yard of the L&N Railroad Company to Rex Barbecue, I saw and recognized William R. Martin, an L&N employee, who is a close friend of Reese Thomas, O. C. Breedlove, and other defendants in the case, driving toward Birmingham in his automobile. When the car got near me, Martin suddenly

accelerated his speed so that I had to move very quickly to get out of the path of the automobile and avoid being hit.

After this incident no one did anything to me directly, but the defendants and their friends all ignored me and refused to look at me or speak to me. On one occasion Engineer E. A. Pruitt informed me that he had had trouble with J. M. Weldon because the latter had criticized Pruitt for speaking to me.

Shortly after the trial, four different employees who are friends of mine came to me on separate occasions and told me privately that I would have to watch my step and be very careful because I had been put on the "list." They were W. W. Cole, who told me I was on the "list" of the "boys", and that "if they couldn't get me themselves they planned to hire it done," R. A. Whitely, J. B. Cole and Joe Herron, all L & N engineers. I did not want to involve them in my troubles, so I did not ask them where they got this information. However, I took what they said, along with what I already knew about the "list," and the Martin incident, as meaning I was in danger, and I applied for and got a permit to carry a pistol for my protection, and went to the expense of buying a pistol.

On October 29, 1956, at 10:10 A.M. I saw Reese Thomas' car as I passed Morgan's Grocery on Jackson Boulevard in Tarrant. Shortly after I passed, going north, this car drove up behind me and swerved toward me, "Screeching" the tires. By this time I had reached a traffic light and the car, with Thomas driving, stopped immediately beside me. He began

cursing me, calling me a "pimp", and berating me in the foulest terms for having, as he said "testified against him." He said he had checked up and knew I had a gun. All the while he was fumbling in the seat of the car as though he had a weapon, and challenged me to draw my pistol, which I did not do. I saw two ladies I knew a short distance ahead and walked toward them, because I hoped this would cause him to stop his language, or, if he did not do so, I could use them as witnesses to get a peace bond against him. Thomas drove slowly along beside me and continued cursing me for being a witness against him, but made no further attempt to hit me with his car. Just before we got close to the women he speeded up and drove away. Since then I have had no further trouble from him.

The "list" is a term commonly known among all L&N employees to refer to certain employees who worked during the strike in March, April and May, 1955, and who were placed on a list scheduled to be beaten up because they had worked. This list was passed around after the strike referred to, and posted at various places and times on bulletin boards and elsewhere. It is common knowledge that a number of those on the "list" have been attacked, several badly beaten, and one forced to shoot one of his attackers to protect himself. Being told that you have been put on the "list" is tantamount to being told that sooner or later you will be attacked by a group of men, armed with such things as lengths of chain, clubs, brass knucks, and the like.

C. F. HOBSON.

Sworn to and subscribed before me this the 14th day of November, 1956.

LUCILE ADAMS,
Notary Public.

ORDER OVERRULING MOTION FOR NEW TRIAL.

(Title Omitted.)

This cause, coming on to be heard on the motion docket on Thursday, December 20, 1956, was submitted to the Court on the plaintiff's amended motion for a new trial and on the defendants' objections to the amended motion for a new trial or a motion to strike said amended motion for a new trial. After due consideration of said separate motions and of the oral argument of counsel:

It is Ordered, Adjudged and Decreed by the Court that the defendants' objections to the plaintiff's amendment to the motion for a new trial be and the same is hereby sustained, and plaintiff's said amendment which was filed on November 15, 1956, be and the same is hereby stricken.

It is further Ordered by the Court that the plaintiff's motion for a new trial filed in this cause on October 10, 1956, be and the same is hereby overruled and denied.

Done and Ordered, this 26 day of December, 1956.

H. H. GROOMS,
United States District Judge.

NOTICE OF APPEAL.

Filed Jan. 23, 1957.

In the United States District Court for the Northern District of Alabama, Southern Division.

Louisville & Nashville Railroad Company, a corporation, Plaintiff,

vs. Civil Action No. 8171.

J. M. Brown, Jr., et al., Defendants.

Notice is hereby given that Louisville & Nashville Railroad Company, a corporation, plaintiff in the above cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment in favor of defendants and against said plaintiff entered in this action on October 2, 1956, and from the order of the District Court overruling plaintiff's motion for a new trial on December 26, 1956.

ROBERT McD. SMITH,
Attorney for Plaintiff, Louisville & Nashville Railroad Company, a corporation.

H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

BOND FOR COSTS ON APPEAL.

Filed Jan. 23, 1957.

(Title Omitted.)

We, Louisville & Nashville Railroad Company, a corporation, as principal, and Reid B. Barnes and Robert McD. Smith as sureties, are held and firmly bound unto the defendants in the full and just sum of $250.00, to be paid to the said defendants, their successors, executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of January, 1957.

Whereas, on October 2, 1956, in an action in the United States District Court for the Northern District of Alabama, between Louisville & Nashville Railroad Company as plaintiff and J. M. Brown, Jr., et al., as defendants, a judgment was rendered against the said plaintiff and the said plaintiff having filed a notice of appeal from such judgment and from the order overruling plaintiff's motion for a new trial dated December 26, 1956, to the United States Court of Appeals for the Fifth Circuit;

Now, therefore, the condition of this obligation is such, that if the said plaintiff shall prosecute his appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as

the said Court of Appeals may award against the said plaintiff if the judgment is modified, then this obligation to be void; otherwise to remain in full force and effect.

LOUISVILLE & NASHVILE
RAILROAD CO.,
A corp.,
By WHITE E. GIBSON,
Its Assistant District Attorney
and duly authorized agent.
REID B. BARNES,
(Reid B. Barnes),
Surety.
ROBERT McD. SMITH,
(Robert McD. Smith),
Surety.

DESIGNATION OF RECORD ON APPEAL.

Filed Feb. 4, 1957.

(Title Omitted.)

Comes the appellant, Louisville & Nashville Railroad Company, and hereby designates the portions of the record in this action to be contained in the record on appeal.

1. The pleadings, including the complaint and all material amendments thereto, defendants' motions to dismiss and all answers and defensive pleadings of the defendants; other motions relating to the pleadings (but not including discovery motions, notices of

the taking of depositions, interrogatories, objections and answers thereto and affidavits in support of discovery proceedings or of other interlocutory matters).

2. The orders of the Court on defendants' motions. to dismiss and on other motions relating to the pleadings.

3. The pre-trial order.

4. Plaintiff's motion for directed verdict.

5. The Court's order denying plaintiff's motion for a directed verdict.

6. The charges requested by plaintiff in writing and not given.

7. Plaintiff's grounds of objection to the Court's refusal to grant its refused charges.

8. All written charges given by the Court at the request of the defendants.

9. The Court's oral charge.

10. Plaintiff's objections assigned to the Court's oral charge and to the giving of such requested charges of defendants as were given by the Court.

11. The jury's separate verdicts.

12. The final judgment of the Court.

13. All evidence introduced on the trial of the case except the testimony of witnesses William M. Breid-

enthal, Willard H. Thompson, Carl Bratton and E. H. Major and the plaintiff's exhibits 2 through 7, inclusive, which testimony and exhibits relate exclusively to the measure and amount of damages which are not involved on this appeal.

14. Plaintiff's motion for a new trial, the amendment thereto offered and affidavits in support thereof.

15. The order of the Court overruling plaintiff's motion for a new trial and disallowing the amendment offered.

16. This designation of the contents of the record.

17. Appellant's statement of points to be relied upon on appeal.

18. Notice of appeal.

19. Bond.

WHITE E. GIBSON, JR.,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing designation of record on appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of counsel for Plaintiff.

Certificate of Service.

I hereby certify that a copy of the foregoing designation of record on appeal has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy of same to his office in the Massey Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of counsel for Plaintiff.

STATEMENT OF POINTS ON APPEAL.

Filed Feb. 4, 1957.

(Title Omitted.)

Comes the appellant, Louisville & Nashville Railroad Company and hereby states the points upon which appellant intends to rely on appeal:

1. The Court erred in granting defendants' motions to dismiss count one of the complaint.

2. The Court erred in granting defendants' motions to dismiss count two of the complaint.

3. The Court erred in granting defendants' motions to dismiss count three of the complaint.

4. The Court erred in refusing to admit evidence of instances of violence, intimidation and sabotage on the occasion of earlier strikes and labor disputes between the plaintiff and its employees during the same year.

5. The Court erred in charging the jury in effect that Section 6 of the Norris-LaGuardia Act (Section 106 of Title 29 USCA) was applicable to this case.

6. The Court erred in refusing to instruct the jury that none of the defendants was sued as a member or an officer of a labor organization as set forth in Section 6 of the Norris-LaGuardia Act.

7. The Court erred in refusing to charge the jury that a strike in violation of an existing union contract is an unlawful strike.

8. The Court erred in refusing to charge the jury that a strike in violation of the provisions of Section 151 et. seq., of Title 45 USCA imposing upon employees the duty to exert every reasonable effort to settle all disputes between the employee and its employees is an unlawful strik.

9. The Court erred in refusing to charge the jury that a "wildcat" strike in defiance of a duly recognized labor organization authorized as the bargaining representative of the participants is an illegal strike.

10. The Court erred in refusing to charge the jury that if a strike is unlawful those participating in it are not entitled to the protection of any law guaranteeing the right to strike.

11. The Court erred in charging the jury in effect that it was not for them to determine whether the strike allegedly called by the defendants was legal or illegal.

12. The Court erred in refusing to give the written charges requested by the plaintiff shown to have been refused by the record certified upon appeal.

13. The Court erred in giving, at the request of the defendants, certain written charges shown to have been given by the record certified upon appeal in this cause.

14. The verdict was against the great weight of the evidence.

15. The Court erred in refusing to direct a verdict in favor of the plaintiff and against the defendants or some of them.

16. The Court erred in overruling plaintiff's motion for a new trial timely filed.

17. The Court erred in not allowing the plaintiff to amend its motion for a new trial.

WHITE E. GIBSON, JR.,
ROBERT McD. SMITH,
Attorneys for Plaintiff.

GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON & SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama,
Of Counsel.

Certificate of Service.

I hereby certify that a copy of the foregoing statement of points on appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of Counsel for Plaintiff.

I hereby certify that a copy of the foregoing statement of points on appeal has been served upon Hon. Erle Pettus, Jr., attorney for defendants for whom he appears, by mailing a copy of same to his office in the Massey Building, Birmingham, Alabama, this 1st day of February, 1957.

ROBERT McD. SMITH,
Of Counsel for Plaintiff.

DESIGNATION OF ADDITIONAL PORTION OF RECORD ON APPEAL.

Filed Feb. 11, 1957.

(Title Omitted.)

Come the appellees, defendants in the trial Court, namely, J. B. Otts, Jr., J. M. Brown, Jr., William F. Pennington, Oliver C. Breedlove, Howard Eugene Anderson, Bruce Barnett, M. L. Hall, J. M. Weldon, H. K. Parker, W. L. Grissom, C. L. McCutcheon, and hereby designate additional portions of the record, proceedings and evidence to be included in the record on appeal as follows; to-wit:

1 Defendants' motion for a directed verdict and order thereon.

2. The testimony of witnesses William M. Breidenthal, Willard H. Thompson, Carl Bratton and E. H. Major, and plaintiff's Exhibits 2 through 7, inclusive, which testimony and exhibits are involved in this appeal. Any exhibits herein designated is subject to transmission to the Appellate Court under Rule 75 (i) Federal Rules of Civil Procedure.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
As Attorney for above
named Appellees.

Of Counsel:
JACKSON, RIVES,
PETTUS & PETERSON.

Certificate of Service.

I hereby certify that a copy of the foregoing Designation of Additional Portion of Record on Appeal has been served upon Hon. Robert McD. Smith, attorney for Plaintiff by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 11th day of February, 1957.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

I hereby certify that a copy of the foregoing Designation of Additional Portion of Record on Appeal has been served upon Hon. R. Macey Taylor, attorney for defendants for whom he appears, by mailing a copy of same to his office in the Frank Nelson Building, Birmingham, Alabama, this 11th day of February, 1957.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.).

MOTION FOR EXTENSION OF TIME FOR FILING OF RECORD ON APPEAL.

Filed February 26, 1957.

(Title Omitted.)

Comes the plaintiff in the above styled cause and moves that the time for the filing of the record on appeal in said cause be extended for 50 days as allowed under Rule 73g of Federal Rules of Civil Pro-

cedure and in support of said motion, plaintiff would show the Court as follows:

1. The record in said cause is voluminous, consisting of hundreds of pages of typed material.

2. Plaintiff has assumed the responsibility of furnishing to the Clerk the greater part of the record to be furnished and will not have sufficient time to complete the preparation without this extension.

3. Defendants in this cause have agreed and consented to said extension as noted below.

ROBERT McD. SMITH,
WHITE E. GIBSON, JR.,
Attorneys for Plaintiff.

Of Counsel:
H. G. BREETZ,
GIBSON & GIBSON,
Comer Building,
Birmingham, Alabama.
LANGE, SIMPSON, ROBINSON
& SOMERVILLE,
1023 Frank Nelson Building,
Birmingham, Alabama.

Defendants, by and through their respective attorneys, waive service and further notice of the foregoing Motion and consent to an extension of time as prayed for.

ERLE PETTUS, JR.,
(Erle Pettus, Jr.),
Attorney for Defendants J. M. Brown, Jr., J. B. Otts, Jr., H. K. Parker, J. M. Weldon, H. E. Southerland. C. L. McCutcheon, W. L. Grissom, M. L. Hall and R. A. Sutterlin,

R. MACEY TAYLOR,
(R. Macey Taylor),
Attorney for Defendants H. M. Baum, A. R. Thomas and R. H. Letchman.

ORDER.

The foregoing Motion having been duly presented to the Court and the Court being of the opinion that the same should be granted,

It is Ordered, Adjudged and Decreed that the time for filing the record on appeal in this cause is hereby extended for an additional 50 days so that said record may be filed on any date that is not more than 90 days from the date of filing the first notice of appeal.

Done this 26 day of February, 1957.

H. H. GROOMS,
District Judge.

ORDER.

(Title Omitted.)

This date came the plaintiff and presented to the Court its motion for order to send original papers and exhibits to the Court of Appeals in lieu of copies thereof, and it appearing to the Court that the defendants in said cause have, by and through their respective attorneys, consented to said motion, and it further appearing to the Court that an order in accordance therewith should be entered,

It is Ordered, Adjudged and Decreed that the original exhibits offered and received in evidence in this cause with the exception of defendants' exhibits 1, 3 and 6 which are susceptible of being readily copied and included within the printed record, be sent by United States mail under separate cover to the Court of Appeals for the Fifth Circuit at the time of filing the final record in said cause and that upon conclusion of the consideration by the Court of Appeals of the matters presented therein said original exhibits be returned by United States Mail to this Court.

Defendants' exhibits 1, 3 and 6 are to be copied and included within the printed record filed in said cause and the originals thereof will be retained in this Court by the Clerk.

Done this 18th day of April, 1957.

SEYBOURN H. LYNNE,
District Judge.

CLERK'S CERTIFICATE.

United States of America,
Northern District of Alabama.

I, WILLIAM E. DAVIS, Clerk of the District Court of the United States for the Northern District of Alabama, Southern Division, do hereby certify that the foregoing pages numbered from one (1) to one thousand six hundred twenty-eight (1628), both inclusive, is a full, true, and correct transcript of the record on appeal in the Matter of Louisville & Nashville Railroad Company, a Corporation, Appellant, vs. J. M. Brown, Jr., et al., Appellees, as fully as the same appears of record and on file in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court at Birmingham, in said District, on this the 19th day of April, 1957.

WILLIAM E. DAVIS,
(William E Davis),
(Seal) Clerk, U.S. District Court.